

SEVENTY-EIGHTH DAY
(Wednesday, May 24, 1995)

The Senate met at 10:45 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper James Morris offered the invocation as follows:

Our heavenly Father, as the Members assemble and prepare for the business of the day, we pray that Your purpose will be served. May Your blessings be with the leadership and each Member as they focus on the heavy issues to be resolved in the final days of this 74th Session. And now in this shared time, in this shared space, may each Member be mindful of the shared concerns. In Your name. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

BILLS SIGNED

The President announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

H.B. 1227

H.B. 2747

GUEST PRESENTED

Senator Truan was recognized and introduced to the Senate Brooks County Judge, Joe B. Garcia.

The Senate welcomed Judge Garcia.

CAPITOL PHYSICIAN

Senator Armbrister was recognized and presented Dr. Harold High of Cuero as the "Doctor for the Day."

The Senate welcomed Dr. High and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate Mayor of the City of Falfurrias, Ernesto Williams; President of the Falfurrias

Chamber of Commerce, Raul Ramirez; and Manager of Falfurrias Central Power and Light Company, Melton Menking.

The Senate welcomed its guests.

CONFERENCE COMMITTEE ON SENATE BILL 14 DISCHARGED

On motion of Senator Bivins and by unanimous consent, the Senate conferees on **S.B. 14** were discharged.

Question—Shall the Senate concur in the House amendments to **S.B. 14**?

Senator Bivins again moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 14** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Armbrister, Sims, Nelson, and Barrientos.

CONFERENCE COMMITTEE ON HOUSE BILL 3003

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 3003** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 3003** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Brown, Haywood, Sims, and Bivins.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1127 ADOPTED

Senator Henderson called from the President's table the Conference Committee Report on **H.B. 1127**. The Conference Committee Report was filed with the Senate on Monday, May 22, 1995.

On motion of Senator Henderson, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 626 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **S.B. 626**. The Conference Committee Report was filed with the Senate on Monday, May 22, 1995.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 815 ADOPTED**

Senator Cain called from the President's table the Conference Committee Report on **H.B. 815**. The Conference Committee Report was filed with the Senate on Monday, May 22, 1995.

On motion of Senator Cain, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 1184

Senator Cain offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 74th Legislature, Regular Session, 1995, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **S.B. 1513** to consider and take action on the following specific matter:

Senate Rule 12.03(1) is suspended to permit the committee to enact Sections 86(a)(4) and (5), Uniform Act Regulating Traffic on Highways, to read as follows:

"(4) a ~~[(c)-A]~~ railroad engine approaching within approximately fifteen hundred (1500) feet of the highway crossing emits a signal audible from such distance and such engine by reason of its speed or nearness to such crossing is an immediate hazard; or

(5) an ~~[(d)-An]~~ approaching railroad train is plainly visible and ~~[is]~~ in hazardous proximity to such crossing."

This action is necessary to protect the lives of drivers of motor vehicles at certain railroad crossings in this state.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

GUESTS PRESENTED

Senator Henderson was recognized and introduced to the Senate a group of students and their teachers from Rosehill Christian School of Tomball.

The Senate welcomed its guests.

**SENATE JOINT RESOLUTION 1
WITH HOUSE AMENDMENTS**

Senator Ellis called S.J.R. 1 from the President's table for consideration of the House amendments to the resolution.

The President laid the resolution and the House amendments before the Senate.

Amendment

Amend S.J.R. 1 by substituting in lieu thereof the following:

A JOINT RESOLUTION

proposing a constitutional amendment abolishing the office of state treasurer.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, abolishing the constitutional office of state treasurer.

(b) The constitutional office of state treasurer is abolished effective September 1, 1997. The transfer of specific constitutional powers and duties to the comptroller of public accounts under the constitutional amendment takes effect on that date. The statutory powers and duties and the property and other obligations of the state treasurer are transferred to officers and agencies of state government in the manner that the legislature provides by general law.

(c) This temporary provision expires September 1, 1997.

SECTION 2. Section 49-c, Article III, Texas Constitution, is amended to read as follows:

Sec. 49-c. The Parks and Wildlife Department, or its successor vested with the powers, duties, and authority which deals with the operation, maintenance, and improvement of State Parks, shall have the authority to provide for, issue and sell general obligation bonds of the State of Texas in an amount not to exceed Seventy-Five Million Dollars (\$75,000,000). The bonds authorized herein shall be called "Texas Park Development Bonds," shall be executed in such form, denominations, and upon such terms as may be prescribed by law, provided, however, that the bonds shall bear a rate or rates of interest as may be fixed by the Parks and Wildlife Department or its successor, but the weighted average annual interest rate, as that phrase is commonly and ordinarily used and understood in the municipal bond market, of all the bonds issued and sold in any installment of any bonds, shall not exceed four and one-half percent (4 1/2%) interest per annum; they may be issued in such installments as said Parks and Wildlife Department, or its said successor, finds feasible and practical in accomplishing the purpose set forth herein.

All moneys received from the sale of said bonds shall be deposited in a fund hereby created with the Comptroller of Public Accounts of the State

of Texas [~~State Treasurer~~] to be known as the Texas Park Development Fund to be administered (without further appropriation) by the said Parks and Wildlife Department, or its said successor, in such manner as prescribed by law.

Such fund shall be used by said Parks and Wildlife Department, or its said successor, under such provisions as the Legislature may prescribe by general law, for the purposes of acquiring lands from the United States, or any governmental agency thereof, from any governmental agency of the State of Texas, or from any person, firm, or corporation, for State Park Sites and for developing said sites as State Parks.

While any of the bonds authorized by this provision, or any interest on any such bonds, is outstanding and unpaid, there is hereby appropriated out of the first moneys coming into the Treasury in each fiscal year, not otherwise appropriated by this Constitution, an amount which is sufficient to pay the principal and interest on such bonds that mature or become due during such fiscal year, less the amount in the interest and sinking fund at the close of the prior fiscal year, which includes any receipts derived during the prior fiscal year by said Parks and Wildlife Department, or its said successor, from admission charges to State Parks, as the Legislature may prescribe by general law.

The Legislature may provide for the investment of moneys available in the Texas Park Development Fund and the interest and sinking fund established for the payment of bonds issued by said Parks and Wildlife Department, or its said successor. Income from such investment shall be used for the purposes prescribed by the Legislature.

From the moneys received by said Parks and Wildlife Department, or its said successor, from the sale of the bonds issued hereunder, there shall be deposited in the interest and sinking fund for the bonds authorized by this section sufficient moneys to pay the interest to become due during the State fiscal year in which the bonds were issued. After all bonds have been fully paid with interest, or after there are on deposit in the interest and sinking fund sufficient moneys to pay all future maturities of principal and interest, additional moneys received from admission charges to State Parks shall be deposited to the State Parks Fund, or any successor fund which may be established by the Legislature as a depository for Park revenue earned by said Parks and Wildlife Department, or its said successor.

All bonds issued hereunder shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be void by reason of their anticipatory nature.

SECTION 3. Subsection (b), Section 49-f, Article III, Texas Constitution, is amended to read as follows:

(b) All money received from the sale of the bonds shall be deposited in a fund created with the comptroller of public accounts [~~state treasurer~~]

to be known as the farm and ranch finance program fund. This fund shall be administered by the Veterans' Land Board in the manner prescribed by law.

SECTION 4. Subsections (i) and (j), Section 49-g, Article III, Texas Constitution, as proposed by H.J.R. 2, 70th Legislature, Regular Session, 1987, are amended to read as follows:

(i) The comptroller [~~state treasurer~~] shall credit to general revenue interest due to the economic stabilization fund that would result in an amount in the economic stabilization fund that exceeds the limit in effect under Subsection (g) of this section.

(j) The comptroller[~~, with the consent of the state treasurer;~~] may transfer money from the economic stabilization fund to general revenue to prevent or eliminate a temporary cash deficiency in general revenue. The comptroller shall return the amount transferred to the economic stabilization fund as soon as practicable, but not later than August 31 of each odd-numbered year. The comptroller [~~state treasurer~~] shall allocate the depository interest as if the transfers had not been made. If the comptroller submits a statement to the governor and the legislature under Article III, Section 49a, of this constitution when money from the economic stabilization fund is in general revenue, the comptroller shall state that the transferred money is not available for appropriation from general revenue.

SECTION 5. Subsection (b), Section 50c, Article III, Texas Constitution, is amended to read as follows:

(b) All money received from the sale of Farm and Ranch Loan Security Bonds shall be deposited in a fund hereby created with the comptroller of public accounts [~~State Treasurer~~] to be known as the "Farm and Ranch Loan Security Fund." This fund shall be administered without further appropriation by the commissioner of agriculture in the manner prescribed by law.

SECTION 6. Section 61, Article III, Texas Constitution, as proposed by S.J.R. 5, 53rd Legislature, Regular Session, 1953, is amended to read as follows:

Sec. 61. The Legislature shall not fix the salary of the Governor, Attorney General, Comptroller of Public Accounts, [~~the Treasurer;~~] Commissioner of the General Land Office or Secretary of State at a sum less than that fixed for such officials in the Constitution on January 1, 1953.

SECTION 7. Section 1, Article IV, Texas Constitution, is amended to read as follows:

Sec. 1. The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, [~~Treasurer;~~] Commissioner of the General Land Office, and Attorney General.

SECTION 8. Section 23, Article IV, Texas Constitution, is amended to read as follows:

Sec. 23. The comptroller of Public Accounts, [~~the Treasurer;~~] the Commissioner of the General Land Office, and any statutory State officer who is elected by the electorate of Texas at large, unless a term of office is otherwise specifically provided in this Constitution, shall each hold office for the term of four years and until his successor is qualified. The four-year term applies to these officers who are elected at the general election in 1974 or thereafter. Each shall receive an annual salary in an amount to be fixed by the Legislature; reside at the Capital of the State during his continuance in office, and perform such duties as are or may be required by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section or in his office, shall be paid, when received, into the State Treasury.

SECTION 9. Section 4, Article VII, Texas Constitution, is amended to read as follows:

Sec. 4. The lands herein set apart to the Public Free School fund, shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The proceeds of such sales must be used to acquire other land for the Public Free School fund as provided by law or the proceeds shall be invested by the comptroller of public accounts [~~treasurer~~], as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

SECTION 10. Section 11b, Article VII, Texas Constitution, is amended to read as follows:

Sec. 11b. Notwithstanding any other provision of this constitution, in managing the assets of the permanent university fund, the Board of Regents of The University of Texas System may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions it establishes and in amounts it considers appropriate, any kind of investment, including investments in the Texas growth fund created by Article XVI, Section 70, of this constitution, that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, acquire or retain for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. This section does not affect the [~~state treasurer's~~] custodial responsibilities of the comptroller of public accounts for public funds, securities, and other evidences of investment.

SECTION 11. Subsection (1), Section 17, Article VII, Texas Constitution, is amended to read as follows:

(1) This section is self-enacting upon the issuance of the governor's proclamation declaring the adoption of the amendment, and the state

comptroller of public accounts [~~and the state treasurer~~] shall do all things necessary to effectuate this section. This section does not impair any obligation created by the issuance of any bonds and notes in accordance with prior law, and all outstanding bonds and notes shall be paid in full, both principal and interest, in accordance with their terms. If the provisions of this section conflict with any other provisions of this constitution, then the provisions of this section shall prevail, notwithstanding all such conflicting provisions.

SECTION 12. Subsection (j), Section 18, Article VII, Texas Constitution, is amended to read as follows:

(j) This section is self-enacting on the issuance of the governor's proclamation declaring the adoption of this amendment, and the state comptroller of public accounts [~~and the state treasurer~~] shall do all things necessary to effectuate this section. This section does not impair any obligation created by the issuance of bonds or notes in accordance with prior law, and all outstanding bonds and notes shall be paid in full, both principal and interest, in accordance with their terms, and the changes herein made in the allocation of the available university fund shall not affect the pledges thereof made in connection with such bonds or notes heretofore issued. If the provisions of this section conflict with any other provision of this constitution, then the provisions of this section shall prevail, notwithstanding any such conflicting provisions.

SECTION 13. Section 2, Article XV, Texas Constitution, is amended to read as follows:

Sec. 2. Impeachment of the Governor, Lieutenant Governor, Attorney General, [~~Treasurer;~~] Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

SECTION 14. Subsections (h) and (q), Section 70, Article XVI, Texas Constitution, are amended to read as follows:

(h) The board of trustees shall establish and operate the fund to the extent practical under the generally accepted business procedures relating to a mutual fund and shall value the investments for determining the purchase or sales price of participating shares of investing funds or systems participating in the fund consistent with investment contracts. Evidences of participation in the fund shall be held by the comptroller of public accounts [~~state treasurer~~] in keeping with the custodial responsibilities of that office.

(q) This section is self-executing and takes effect on its adoption by the voters. All state officials named in this section [~~the state treasurer;~~] and the comptroller of public accounts shall take all necessary actions for the implementation of this section. The legislature shall provide by law for full disclosure of all details concerning investments authorized by this section.

SECTION 15. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 1996. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment abolishing the office of state treasurer."

Floor Amendment No. 1

Amend C.S.S.J.R. 1 as follows:

(1) In SECTION 1 of the resolution, in Subsection (b) of the temporary provision added to the Texas Constitution (House committee report, page 1, line 11), strike "1997" and substitute "1996".

(2) In SECTION 15 of the resolution, in the first sentence (House committee report, page 10, line 6), strike "November 5, 1996" and substitute "November 7, 1995".

The amendments were read.

Senator Ellis moved to concur in the House amendments to S.J.R. 1.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Henderson.

SENATE BILL 20 WITH HOUSE AMENDMENTS

Senator Ellis called S.B. 20 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend S.B. 20 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to transferring the powers and duties of the state treasurer to the comptroller of public accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 404, Government Code, is amended by adding Section 404.0011 to read as follows:

Sec. 404.0011. TRANSFER OF TREASURER'S POWERS AND DUTIES. (a) The powers and duties of the state treasurer under this chapter or other law are transferred to the comptroller.

(b) A reference in law to the state treasurer is a reference to the comptroller.

(c) If the state treasurer and the comptroller or their respective designees are both ex officio members of a committee or governing body under law, the transfer of the powers and duties under this section does not give the comptroller more than one vote or position on the committee or governing body. If the state treasurer and the comptroller both have the power to appoint members to a committee under law, the transfer of the powers and duties under this section does not allow the comptroller to exercise the power of appointment given to the treasurer under law in addition to the power of appointment given to the comptroller under law. If the state treasurer and the comptroller both have the power to appoint

members to a governing body under law, the comptroller may exercise the power of appointment given to the treasurer under law in addition to the power of appointment given to the comptroller under law only if the members of the governing body serve six-year terms and the composition of the governing body is subject to Section 30a, Article XVI, Texas Constitution.

(d) The comptroller may contract with a private entity to perform an activity transferred under this section as long as the activity is not solely a sovereign function of the state.

SECTION 2. (a) The office of state treasurer is abolished on September 1, 1997. On that date, all powers, duties, obligations, rights, contracts, leases, records, employees, real or personal property, and unspent and unobligated appropriations and other funds of the state treasurer are transferred to the comptroller. Before that date, the comptroller with the agreement of the state treasurer may transfer any records, employees, or real or personal property of the treasury to the comptroller in preparation for the transfer provided for in this Act.

(b) The abolishment of the office of state treasurer does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the state treasurer.

(c) All rules, policies, procedures, and decisions of the state treasurer are continued in effect as rules, policies, procedures, and decisions of the comptroller until superseded by a rule or other appropriate action of the comptroller.

(d) Any action or proceeding before the state treasurer is transferred without change in status to the comptroller, and the comptroller assumes, without a change in status, the position of the treasurer in any action or proceeding to which the treasurer is a party.

SECTION 3. This Act takes effect September 1, 1997, if the constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, that abolishes the office of state treasurer takes effect. If that amendment does not take effect, this Act has no effect.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 20 as follows:

(1) In SECTION 2(a) of the bill, at the end of the first sentence (House committee report, page 2, line 9), strike "1997" and substitute "1996".

(2) In SECTION 3 of the bill, in the first sentence (House committee report, page 3, line 6), strike "1997" and substitute "1996".

(3) Add the following sentence at the end of SECTION 3 of the bill (House committee report, page 3, line 10):

This Act takes effect on the date the constitutional amendment takes effect for the limited purpose of allowing the state treasurer and the comptroller to make agreed preparatory transfers of records, employees, or real or personal property under Section 2(a) of this Act.

The amendments were read.

On motion of Senator Ellis and by unanimous consent, the Senate concurred in the House amendments to S.B. 20 by a viva voce vote.

(Senator Armbrister in Chair)

SENATE BILL 94 WITH HOUSE AMENDMENTS

Senator Ellis called S.B. 94 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend S.B. 94 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of political contributions, political expenditures, and political advertising in connection with certain judicial candidates and officeholders and to personal financial statements filed by certain judicial officeholders; providing civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 253, Election Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. JUDICIAL CAMPAIGN FAIRNESS ACT

Sec. 253.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a political contribution or political expenditure in connection with the office of:

- (1) chief justice or justice, supreme court;
- (2) presiding judge or judge, court of criminal appeals;
- (3) chief justice or justice, court of appeals;
- (4) district judge;
- (5) judge, statutory county court; or
- (6) judge, statutory probate court.

Sec. 253.152. DEFINITIONS. In this subchapter:

(1) "Complying candidate" or "complying officeholder" means a judicial candidate who files a declaration of compliance under Section 253.164(a)(1).

(2) "In connection with an election" means:

(A) with regard to a contribution that is designated in writing for a particular election, the election designated; or

(B) with regard to a contribution that is not designated in writing for a particular election or that is designated as an officeholder contribution, the next election for that office occurring after the contribution is made.

(3) "Judicial district" means the territory from which a judicial candidate is elected.

(4) "Noncomplying candidate" means a judicial candidate who:

(A) files a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2);

(B) files a declaration of compliance under Section 253.164(a)(1) but later exceeds the limits on expenditures; or

(C) violates Section 253.173 or 253.174.

(5) "Statewide judicial office" means the office of chief justice or justice, supreme court, or presiding judge or judge, court of criminal appeals.

Sec. 253.153. CONTRIBUTION PROHIBITED EXCEPT DURING ELECTION PERIOD. (a) A judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder may not knowingly accept a political contribution except during the period:

(1) beginning on:

(A) the 180th day before the date an application for a place on the ballot or for nomination by convention for the office is required to be filed, if the election is for a full term; or

(B) the later of the 180th day before the date an application for a place on the ballot or for nomination by convention for the office is required to be filed or the date a vacancy in the office occurs, if the election is for an unexpired term; and

(2) ending on the 120th day after the date of:

(A) the general election for state and county officers, if the candidate or officeholder has an opponent in the general election; or

(B) except as provided by Subsection (c), the primary election, if the candidate or officeholder does not have an opponent in the general election.

(b) Subsection (a)(2) does not apply to a political contribution that was made and accepted with the intent that it be used to defray expenses incurred in connection with an election contest.

(c) Notwithstanding Subsection (a)(2), a judicial candidate who does not have an opponent whose name will appear on the ballot or a specific-purpose committee for supporting such a candidate may accept a political contribution after another person files a declaration of write-in candidacy opposing the candidate.

(d) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

Sec. 253.154. WRITE-IN CANDIDACY. (a) A write-in candidate for judicial office or a specific-purpose committee for supporting a write-in

candidate for judicial office may not knowingly accept a political contribution before the candidate files a declaration of write-in candidacy.

(b) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

Sec. 253.155. CONTRIBUTION LIMITS. (a) Except as provided by Subsection (c), a judicial candidate may not knowingly accept political contributions from a person that in the aggregate exceed the limits prescribed by Subsection (b) in connection with each election in which the candidate is involved.

(b) The contribution limits are:

(1) for a statewide judicial office, \$5,000; or

(2) for any other judicial office:

(A) \$1,000, if the population of the judicial district is less than 250,000;

(B) \$2,500, if the population of the judicial district is 250,000 to one million; or

(C) \$5,000, if the population of the judicial district is more than one million.

(c) This section does not apply to a political contribution made by a general-purpose committee.

(d) For purposes of this section, a contribution by a law firm whose members are each members of a second law firm is considered to be a contribution by the law firm that has members other than the members the firms have in common.

(e) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

Sec. 253.156. CONTRIBUTION TO CERTAIN COMMITTEES CONSIDERED CONTRIBUTION TO CANDIDATE. For purposes of Section 253.155, a contribution to a specific-purpose committee for the purpose of supporting a judicial candidate, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 253.157. LIMIT ON CONTRIBUTION BY MEMBER OR GENERAL-PURPOSE COMMITTEE OF LAW FIRM. (a) A judicial candidate may not accept a political contribution in excess of \$50 from a person if:

(1) the person is a member of a law firm or a general-purpose committee established or controlled by a law firm; and

(2) the contribution when aggregated with all political contributions accepted by the candidate from other members of the law firm or from a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155.

(b) A candidate who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

(1) the last day of the reporting period in which the contribution is received; or

(2) the fifth day after the date the contribution is received.

(c) A candidate who fails to return a political contribution as required by Subsection (b) is liable for a civil penalty not to exceed three times the total amount of political contributions accepted from members of or general-purpose committees established or controlled by the law firm in connection with the election.

(d) For purposes of this section, a general-purpose committee is established or controlled by a law firm if the committee is established or controlled by members of the law firm.

(e) In this section:

(1) "Law firm" means a partnership, limited liability partnership, or professional corporation organized for the practice of law.

(2) "Member" means a partner, associate, shareholder, employee, or person designated "of counsel" or "of the firm".

Sec. 253.158. CONTRIBUTION BY SPOUSE OR CHILD CONSIDERED TO BE CONTRIBUTION BY INDIVIDUAL. (a) For purposes of Sections 253.155 and 253.157, a contribution by the spouse or child of an individual is considered to be a contribution by the individual.

(b) In this section, "child" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Sec. 253.159. EXCEPTION TO CONTRIBUTION LIMITS. Sections 253.155 and 253.157 do not apply to an individual who is related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

Sec. 253.160. AGGREGATE LIMIT ON CONTRIBUTIONS FROM AND DIRECT CAMPAIGN EXPENDITURES BY GENERAL-PURPOSE COMMITTEE. (a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not knowingly accept a political contribution from a general-purpose committee that, when aggregated with each other political contribution from a general-purpose committee in connection with an election, exceeds 15 percent of the applicable limit on expenditures prescribed by Section 253.168, regardless of whether the limit on expenditures is suspended.

(b) A candidate or officeholder who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

(1) the last day of the reporting period in which the contribution is received; or

(2) the fifth day after the date the contribution is received.

(c) For purposes of this section, an expenditure by a general-purpose committee for the purpose of supporting a candidate, for opposing the

candidate's opponent, or for assisting the candidate as an officeholder is considered to be a contribution to the candidate unless the campaign treasurer of the general-purpose committee, in an affidavit filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed, states that the committee has not directly or indirectly communicated with the candidate's campaign, including the candidate, an aide to the candidate, a campaign officer, or a campaign consultant, or a specific-purpose committee in regard to a strategic matter, including polling data, advertising, or voter demographics, in connection with the candidate's campaign.

(d) This section does not apply to a political expenditure by the principal political committee of the state executive committee or a county executive committee of a political party that complies with Section 253.171(b).

(e) A person who violates this section is liable for a civil penalty not to exceed three times the amount by which the political contributions accepted in violation of this section exceed the applicable limit prescribed by Subsection (a).

Sec. 253.161. USE OF CONTRIBUTION FROM NONJUDICIAL OFFICE PROHIBITED. (a) A judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder may not use a political contribution to make a campaign expenditure for judicial office or to make an officeholder expenditure in connection with a judicial office if the contribution was accepted while the candidate or officeholder:

(1) was a candidate for an office other than a judicial office; or

(2) held an office other than a judicial office, unless the person had become a candidate for judicial office.

(b) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions used in violation of this section.

Sec. 253.162. RESTRICTIONS ON REIMBURSEMENT OF PERSONAL FUNDS AND PAYMENTS ON CERTAIN LOANS. (a) A judicial candidate or officeholder who makes political expenditures from the person's personal funds may not reimburse the personal funds from political contributions in amounts that in the aggregate exceed, for each election in which the person's name appears on the ballot:

(1) for a statewide judicial office, \$100,000; or

(2) for an office other than a statewide judicial office, five times the applicable contribution limit under Section 253.155.

(b) A judicial candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, may not use political contributions to repay the loans.

(c) A person who is both a candidate and an officeholder may reimburse the person's personal funds only in one capacity.

(d) A person who violates this section is liable for a civil penalty not to exceed three times the amount by which the reimbursement made in violation of this section exceeds the applicable limit prescribed by Subsection (a).

Sec. 253.163. NOTICE REQUIRED FOR CERTAIN POLITICAL EXPENDITURES. (a) A person other than a candidate, officeholder, or the principal political committee of the state executive committee or a county executive committee of a political party may not make political expenditures that in the aggregate exceed \$5,000 for the purpose of supporting or opposing a candidate for an office other than a statewide judicial office or assisting such a candidate as an officeholder unless the person files with the authority with whom a campaign treasurer appointment by a candidate for the office is required to be filed a written declaration of the person's intent to make expenditures that exceed the limit prescribed by this subsection.

(b) A person other than a candidate, officeholder, or the principal political committee of the state executive committee or a county executive committee of a political party may not make political expenditures that in the aggregate exceed \$25,000 for the purpose of supporting or opposing a candidate for a statewide judicial office or assisting such a candidate as an officeholder unless the person files with the commission a written declaration of the person's intent to make expenditures that exceed the limit prescribed by this subsection.

(c) A declaration under Subsection (a) or (b) must be filed not later than the earlier of:

(1) the date the person makes the political expenditure that causes the person to exceed the limit prescribed by Subsection (a) or (b); or

(2) the 60th day before the date of the election in connection with which the political expenditures are intended to be made.

(d) A declaration received under Subsection (a) or (b) shall be filed with the records of each judicial candidate or officeholder on whose behalf the person filing the declaration intends to make political expenditures. If the person intends to make only political expenditures opposing a judicial candidate, the declaration shall be filed with the records of each candidate for the office.

(e) An expenditure made by a political committee or other association that consists only of costs incurred in contacting the committee's or association's membership may be made without the declaration required by Subsection (a) or (b).

(f) For purposes of this section, a person who makes a political expenditure benefitting more than one judicial candidate or judicial officeholder shall, in accordance with rules adopted by the commission, allocate a portion of the expenditure to each candidate or officeholder whom the expenditure benefits in proportion to the benefit received by that candidate or officeholder. For purposes of this subsection:

(1) a political expenditure for supporting judicial candidates or assisting judicial officeholders benefits each candidate or officeholder supported or assisted; and

(2) a political expenditure for opposing a judicial candidate benefits each opponent of the candidate.

(g) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political expenditures made in violation of this section.

Sec. 253.164. VOLUNTARY COMPLIANCE. (a) When a person becomes a candidate for a judicial office, the person shall file with the authority with whom the candidate's campaign treasurer appointment is required to be filed:

(1) a sworn declaration of compliance stating that the person voluntarily agrees to comply with the limits on expenditures prescribed by this subchapter; or

(2) a written declaration of the person's intent to make expenditures that exceed the limits prescribed by this subchapter.

(b) The limits on contributions and on reimbursement of personal funds prescribed by this subchapter apply to complying candidates unless suspended as provided by Section 253.165 or 253.170. The limits on contributions and on reimbursement of personal funds prescribed by this subchapter apply to noncomplying candidates regardless of whether the limits on contributions, expenditures, and reimbursement of personal funds are suspended for complying candidates.

(c) A judicial candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure before the candidate files a declaration under Subsection (a).

(d) A person who violates Subsection (c) is liable for a civil penalty not to exceed three times the amount of the political contributions or political expenditures made in violation of this section.

Sec. 253.165. EFFECT OF NONCOMPLYING CANDIDATE. (a) A complying candidate or a specific-purpose committee for supporting a complying candidate is not required to comply with the limits on contributions, expenditures, and the reimbursement of personal funds prescribed by this subchapter if another person becomes a candidate for the same office and:

(1) files a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2);

(2) files a declaration of compliance under Section 253.164(a)(1) but later exceeds the limits on expenditures; or

(3) violates Section 253.173 or 253.174.

(b) The executive director of the commission shall issue an order suspending the limits on contributions and expenditures for a specific office not later than the fifth day after the date the executive director determines that:

(1) a person has become a candidate for that office and has filed the declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2);

(2) a complying candidate for that office has exceeded the limit on expenditures prescribed by this subchapter; or

(3) a candidate for that office has violated Section 253.173 or 253.174.

(c) A county clerk who receives a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2) shall deliver a copy of the declaration to the executive director of the commission not later than the fifth day after the date the county clerk receives the declaration. A county clerk who receives a written allegation that a complying candidate has exceeded the limit on expenditures or that a candidate has engaged in conduct prohibited by Section 253.173 or 253.174 shall deliver a copy of the allegation to the executive director not later than the fifth day after the date the county clerk receives the allegation. The county clerk shall, at no cost to the commission, deliver to the executive director by mail or telephonic facsimile machine copies of documents relevant to the allegation not later than 48 hours after the executive director requests the documents. A county clerk is required to act under this subsection only in connection with an office for which a campaign treasurer appointment is required to be filed with that county clerk.

Sec. 253.166. BENEFIT TO COMPLYING CANDIDATE. (a) A complying candidate is entitled to state on political advertising as provided by Section 255.008 that the candidate complies with the Judicial Campaign Fairness Act, regardless of whether the limits on contributions, expenditures, and the reimbursement of personal funds are later suspended.

(b) A noncomplying candidate is not entitled to the benefit provided by this section.

Sec. 253.167. CERTIFICATION OF POPULATION; NOTICE OF CONTRIBUTION AND EXPENDITURE LIMITS. (a) For purposes of this subchapter only, not later than June 1 of each odd-numbered year, the secretary of state shall:

(1) deliver to the commission a written certification of the population of each judicial district for which a candidate for judge or justice must file a campaign treasurer appointment with the commission; and

(2) deliver to the county clerk of each county a written certification of the county's population, if the county:

(A) comprises an entire judicial district under Chapter 26, Government Code; or

(B) has a statutory county court or statutory probate court, other than a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code.

(b) On receipt of the certification of population under Subsection (a), the commission or county clerk, as appropriate, shall make available to each candidate for an office covered by this subchapter written notice of the contribution and expenditure limits applicable to the office the candidate seeks.

Sec. 253.168. EXPENDITURE LIMITS. (a) For each election in which the candidate is involved, a complying candidate may not knowingly make or authorize political expenditures that in the aggregate exceed:

- (1) for a statewide judicial office, \$2 million;
- (2) for the office of chief justice or justice, court of appeals:
 - (A) \$500,000, if the population of the judicial district is more than one million; or
 - (B) \$350,000, if the population of the judicial district is one million or less; or
- (3) for an office other than an office covered by Subdivision (1) or (2):
 - (A) \$350,000, if the population of the judicial district is more than one million;
 - (B) \$200,000, if the population of the judicial district is 250,000 to one million; or
 - (C) \$100,000, if the population of the judicial district is less than 250,000.

(b) A complying candidate who violates this section is liable for a civil penalty not to exceed three times the amount by which the political expenditures made in violation of this section exceed the applicable limit prescribed by Subsection (a).

Sec. 253.169. EXPENDITURE BY CERTAIN COMMITTEES CONSIDERED EXPENDITURE BY CANDIDATE. (a) For purposes of Section 253.168, an expenditure by a specific-purpose committee for the purpose of supporting a candidate, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be an expenditure by the candidate unless the candidate, in an affidavit filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed, states that the candidate's campaign, including the candidate, an aide to the candidate, a campaign officer, or a campaign consultant of the candidate, has not directly or indirectly communicated with the committee in regard to a strategic matter, including polling data, advertising, or voter demographics, in connection with the candidate's campaign.

(b) This section applies only to an expenditure as to which the candidate or officeholder receives notice as required by Section 254.128.

(c) An affidavit under this section shall be filed with the next report the candidate or officeholder is required to file under Chapter 254 following receipt of the notice required by Section 254.128.

Sec. 253.170. EFFECT OF CERTAIN POLITICAL EXPENDITURES. (a) A complying candidate for an office other than a statewide judicial office or a specific-purpose committee for supporting such a candidate is not required to comply with the limits on contributions, expenditures, and the reimbursement of personal funds prescribed by this subchapter if a person other than the candidate's opponent or the principal political committee of the state executive committee or a county executive committee of a political party makes political expenditures that in the aggregate exceed \$5,000 for the purpose of supporting the candidate's opponent, opposing the candidate, or assisting the candidate's opponent as an officeholder.

(b) A complying candidate for a statewide judicial office or a specific-purpose committee for supporting such a candidate is not required to comply with the limits on contributions, expenditures, and the reimbursement of personal funds prescribed by this subchapter if a person other than the candidate's opponent or the principal political committee of the state executive committee or a county executive committee of a political party makes political expenditures that in the aggregate exceed \$25,000 for the purpose of supporting the candidate's opponent, opposing the candidate, or assisting the candidate's opponent as an officeholder.

(c) The executive director of the commission shall issue an order suspending the limits on contributions, expenditures, and the reimbursement of personal funds for a specific office not later than the fifth day after the date the executive director determines that:

(1) a declaration of intent to make expenditures that exceed the limit prescribed by Subsection (a) or (b) is filed in connection with the office as provided by Section 253.163; or

(2) a political expenditure that exceeds the limit prescribed by Subsection (a) or (b) has been made.

(d) A county clerk who receives a declaration of intent to make expenditures that exceed the limit prescribed by Subsection (a) or (b) shall deliver a copy of the declaration to the executive director of the commission not later than the fifth day after the date the county clerk receives the declaration. A county clerk who receives a written allegation that a person has made a political expenditure that exceeds the limit prescribed by Subsection (a) or (b) shall deliver a copy of the allegation to the executive director not later than the fifth day after the date the county clerk receives the allegation. The county clerk shall, at no cost to the commission, deliver to the executive director by mail or telephonic facsimile machine copies of documents relevant to the allegation not later than 48 hours after the executive director requests the documents. A county clerk is required to act under this subsection only in connection with an office for which a campaign treasurer appointment is required to be filed with that county clerk.

(e) An expenditure made by a political committee or other association that consists only of costs incurred in contacting the committee's or association's membership does not count towards the limit prescribed by Subsection (a) or (b).

Sec. 253.171. CONTRIBUTION FROM OR DIRECT CAMPAIGN EXPENDITURE BY POLITICAL PARTY. (a) Except as provided by Subsection (b), a political contribution to or a direct campaign expenditure on behalf of a complying candidate that is made by the principal political committee of the state executive committee or a county executive committee of a political party is considered to be a political expenditure by the candidate for purposes of the expenditure limits prescribed by Section 253.168.

(b) Subsection (a) does not apply to a political expenditure for a generic get-out-the-vote campaign or for a written list of two or more candidates that:

(1) identifies the party's candidates by name and office sought, office held, or photograph;

(2) does not include any reference to the judicial philosophy or positions on issues of the party's judicial candidates; and

(3) is not broadcast, cablecast, published in a newspaper or magazine, or placed on a billboard.

Sec. 253.172. RESTRICTION ON EXCEEDING EXPENDITURE LIMITS. (a) A candidate who files a declaration of compliance under Section 253.164(a)(1) and who later files a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2) or a specific-purpose committee for supporting such a candidate may not make a political expenditure that causes the person to exceed the applicable limit on expenditures prescribed by Section 253.168 before the 60th day after the date the candidate files the declaration of intent to exceed the limits on expenditures.

(b) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political expenditures made in violation of this section.

Sec. 253.173. AGREEMENT TO EVADE LIMITS PROHIBITED. (a) A complying candidate may not:

(1) solicit a person to enter a campaign as a noncomplying candidate opposing the complying candidate; or

(2) enter into an agreement under which a person enters a campaign as a noncomplying candidate opposing the complying candidate.

(b) A candidate who violates this section is considered to be a noncomplying candidate.

Sec. 253.174. MISREPRESENTATION OF OPPONENT'S COMPLIANCE WITH OR VIOLATION OF SUBCHAPTER PROHIBITED.

(a) A candidate for judicial office may not knowingly misrepresent that an opponent of the candidate:

(1) is a noncomplying candidate; or

(2) has violated this subchapter.

(b) A candidate who violates this section is considered to be a noncomplying candidate.

Sec. 253.175. JUDICIAL CAMPAIGN FAIRNESS FUND. (a) The judicial campaign fairness fund is a special account in the general revenue fund.

(b) The judicial campaign fairness fund consists of:

(1) penalties recovered under Section 253.176; and

(2) any gifts or grants received by the commission under Subsection (e).

(c) The judicial campaign fairness fund may be used only for:

(1) voter education projects that relate to judicial campaigns; and

(2) payment of costs incurred in imposing civil penalties under this subchapter.

(d) To the extent practicable, the fund shall be permitted to accumulate until the balance is sufficient to permit the publication of a voter's guide that lists candidates for judicial office, their backgrounds, and similar information. The commission shall implement this subsection and shall adopt rules under which a candidate must provide information to the

commission for inclusion in the voter's guide. In providing the information, the candidate shall comply with applicable provisions of the Code of Judicial Conduct. The voter's guide must, to the extent practicable, indicate whether each candidate is a complying candidate or noncomplying candidate, based on declarations filed under Section 253.164 or determinations by the executive director or the county clerk, as appropriate, under Section 253.165. The listing of a noncomplying candidate may not include any information other than the candidate's name and must include a statement that the candidate is not entitled to have complete information about the candidate included in the guide.

(e) The commission may accept gifts and grants for the purposes described by Subsections (c)(1) and (d). Funds received under this subsection shall be deposited to the credit of the judicial campaign fairness fund.

(f) The judicial campaign fairness fund is exempt from Sections 403.094 and 403.095, Government Code.

Sec. 253.176. CIVIL PENALTY. (a) The commission may impose a civil penalty against a person only after a formal hearing as provided by Subchapter E, Chapter 571, Government Code.

(b) The commission shall base the amount of the penalty on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations; and
- (4) any other matter that justice may require.

(c) A penalty collected under this section shall be deposited to the credit of the judicial campaign fairness fund.

SECTION 2. Sections 253.003, 253.004, and 253.005, Election Code, are amended to read as follows:

Sec. 253.003. UNLAWFULLY MAKING OR ACCEPTING CONTRIBUTION. (a) A person may not knowingly make a political contribution in violation of this chapter.

(b) A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter.

(c) This section does not apply to a political contribution made or accepted in violation of Subchapter E.

(d) Except as provided by Subsection (e) [~~(d)~~], a person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) [~~(d)~~] A violation of Subsection (a) or (b) is a felony of the third degree if the contribution is made in violation of Subchapter D.

Sec. 253.004. UNLAWFULLY MAKING EXPENDITURE. (a) A person may not knowingly make or authorize a political expenditure in violation of this chapter.

(b) This section does not apply to a political expenditure made or authorized in violation of Subchapter F.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 253.005. EXPENDITURE FROM UNLAWFUL CONTRIBUTION. (a) A person may not knowingly make or authorize a political expenditure

wholly or partly from a political contribution the person knows to have been made in violation of this chapter.

(b) This section does not apply to a political expenditure that is:

- (1) prohibited by Section 253.101; or
- (2) made from a political contribution made in violation of

Subchapter F.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 3. Subchapter C, Chapter 254, Election Code, is amended by adding Section 254.0611 to read as follows:

Sec. 254.0611. ADDITIONAL CONTENTS OF REPORTS BY CERTAIN JUDICIAL CANDIDATES. (a) In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a judicial office covered by Subchapter F, Chapter 253, must include:

(1) the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period;

(2) for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period:

(A) the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; or

(B) if the individual is a child, the full name of the law firm of which either of the individual's parents is a member, if any;

(3) a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period;

(4) for each political contribution accepted by the person filing the report but not received as of the last day of the reporting period:

(A) the full name and address of the person making the contribution;

(B) the amount of the contribution; and

(C) the date of the contribution; and

(5) for each outstanding loan to the person filing the report as of the last day of the reporting period:

(A) the full name and address of the person or financial institution making the loan; and

(B) the full name and address of each guarantor of the loan other than the candidate.

(b) In this section:

(1) "Child" has the meaning assigned by Section 253.158.

(2) "Law firm" and "member" have the meanings assigned by Section 253.157.

SECTION 4. Subchapter D, Chapter 254, Election Code, is amended by adding Section 254.0911 to read as follows:

Sec. 254.0911. ADDITIONAL CONTENTS OF REPORTS BY CERTAIN JUDICIAL OFFICEHOLDERS. In addition to the contents required by Sections 254.031 and 254.091, each report by a holder of a

judicial office covered by Subchapter F, Chapter 253, must include the contents prescribed by Section 254.0611.

SECTION 5. Subchapter E, Chapter 254, Election Code, is amended by adding Section 254.1211 to read as follows:

Sec. 254.1211. ADDITIONAL CONTENTS OF REPORTS OF CERTAIN COMMITTEES. In addition to the contents required by Sections 254.031 and 254.121, each report by a specific-purpose committee for supporting or opposing a candidate for or assisting a holder of a judicial office covered by Subchapter F, Chapter 253, must include the contents prescribed by Section 254.0611.

SECTION 6. Chapter 255, Election Code, is amended by adding Section 255.008 to read as follows:

Sec. 255.008. DISCLOSURE ON POLITICAL ADVERTISING FOR JUDICIAL OFFICE. (a) This section applies only to a candidate or political committee covered by Subchapter F, Chapter 253.

(b) Political advertising by a candidate who files a declaration of intent to comply with the limits on expenditures under Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate may include the following statement: "Political advertising paid for by (name of candidate or committee) in compliance with the voluntary limits of the Judicial Campaign Fairness Act."

(c) Political advertising by a candidate who files a declaration of intent to comply with the limits on expenditures under Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate that does not contain the statement prescribed by Subsection (b) must comply with Section 255.001.

(d) Political advertising by a candidate who files a declaration of intent to exceed the limits on expenditures under Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate must include the following statement: "Political advertising paid for by (name of candidate or committee), (who or which) has rejected the voluntary limits of the Judicial Campaign Fairness Act."

(e) The commission shall adopt rules providing for:

(1) the minimum size of the disclosure required by this section in political advertising that appears on television or in writing; and

(2) the minimum duration of the disclosure required by this section in political advertising that appears on television or radio.

(f) A person who violates this section or a rule adopted under this section commits an offense. An offense under this section is a Class B misdemeanor.

SECTION 7. Chapter 159, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. FINANCIAL DISCLOSURE
BY COUNTY JUDICIAL OFFICERS

Sec. 159.051. DEFINITION. In this subchapter, "county judicial officer" means the judge of a statutory county court or statutory probate court.

Sec. 159.052. FILING REQUIREMENT. A county judicial officer or a candidate for office as a county judicial officer shall file with the county clerk a financial statement that complies with Sections 572.022 and 572.023, Government Code.

Sec. 159.053. FILING DATES; TIMELINESS OF FILING. (a) A county judicial officer shall file the financial statement required by this subchapter within the time prescribed by Section 572.026, Government Code. A candidate for office as a county judicial officer shall file the financial statement required by this subchapter within the time prescribed by Section 572.027, Government Code.

(b) The timeliness of the filing is governed by Section 572.029, Government Code.

Sec. 159.054. PREPARATION OF FORMS. (a) The county clerk may:

(1) design a form to be used for filing the financial statement required by this subchapter; or

(2) require that a form designed by the Texas Ethics Commission under Chapter 572, Government Code, be used for filing the financial statement.

(b) The county clerk shall make copies of the form available to each person required to file under this subchapter within the time prescribed by Section 572.030(c), Government Code.

Sec. 159.055. PUBLIC ACCESS TO STATEMENTS. (a) A financial statement filed under this subchapter is a public record. The county clerk shall maintain the financial statements in a manner that is accessible to the public during regular business hours.

(b) Until the first anniversary of the date a financial statement is filed, each time a person requests to see the financial statement, excluding the county clerk or an employee of the county clerk acting on official business, the county clerk shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The county clerk shall maintain that statement in the file until the first anniversary of the date the financial statement is filed.

(c) After the second anniversary of the date a person ceases to be a county judicial officer, the county clerk may and on notification from the former officer shall destroy each financial statement filed by the officer.

Sec. 159.056. FAILURE TO FILE; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) is a county judicial officer or a candidate for office as a county judicial officer; and

(2) knowingly fails to file a financial statement as required by this subchapter.

(b) An offense under this section is a Class B misdemeanor.

SECTION 8. Subdivision (3), Section 159.032, Local Government Code, is amended to read as follows:

(3) "County judicial officer" means a ~~[judge of a statutory county court;]~~ justice of the peace[;] or a master, magistrate, or referee appointed by a justice of the peace ~~[one of those judges]~~.

SECTION 9. Sections 253.155, 253.156, 253.157, 253.163 through 253.171, and 253.173, Election Code, as added by this Act, are not severable, and none would have been enacted without the others. If any one of those provisions is held invalid, each of those provisions is invalid.

SECTION 10. (a) If this Act receives the votes required by Section 39, Article III, Texas Constitution, for an effective date before the 91st day after the last day of the legislative session:

(1) Sections 1, 2, 9, 11, and this section of this Act take effect immediately; and

(2) Sections 3, 4, and 5 of this Act take effect July 1, 1995.

(b) If this Act does not receive the votes required by Section 39, Article III, Texas Constitution, for an effective date before the 91st day after the last day of the legislative session, Sections 1 through 5, 9, 11, and this section of this Act take effect September 1, 1995.

(c) Sections 6, 7, and 8 of this Act take effect September 1, 1995.

(d) Subchapter F, Chapter 253, Election Code, as added by this Act, applies only to a political contribution accepted or political expenditure made on or after the effective date of Section 1 of this Act. A political contribution accepted or political expenditure made before the effective date of Section 1 of this Act is governed by the law in effect on the date the contribution was accepted or the expenditure was made and is not aggregated with political contributions accepted or political expenditures made on or after that date.

(e) Sections 254.0611, 254.0911, and 254.1211, Election Code, as added by this Act, apply to account balances, assets, and debts existing as of the effective date of Sections 3, 4, and 5 of this Act and to the reporting of a political contribution accepted on or after that date. The reporting of a political contribution accepted before the effective date of Sections 3, 4, and 5 of this Act is governed by the law in effect on the date it was accepted.

SECTION 11. (a) For purposes of Subchapter F, Chapter 253, Election Code, as added by this Act, not later than the 15th day after the effective date of Section 1 of this Act, the secretary of state shall:

(1) deliver to the Texas Ethics Commission a written certification of the population of each judicial district for which a candidate for judge or justice must file a campaign treasurer appointment with the commission; and

(2) deliver to the county clerk of each county a written certification of the county's population, if the county:

(A) comprises an entire judicial district under Chapter 26, Government Code; or

(B) has a statutory county court or statutory probate court, other than a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code.

(b) On receipt of the certification of population under Subsection (a) of this section, the Texas Ethics Commission or county clerk, as appropriate, shall make available to each candidate for an office covered

by Subchapter F, Chapter 253, Election Code, as added by this Act, written notice of the contribution limits applicable to the office under Section 253.155, Election Code, as added by this Act, and the expenditure limits applicable to the office under Section 253.168, Election Code, as added by this Act.

(c) In this section, "judicial district" means the territory from which a judicial candidate is elected.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment No. 1

Amend C.S.S.B. 94 as follows:

(1) In SECTION 1 of the bill, in proposed Subsection (a)(1)(A), Section 253.153, Election Code (House committee report, page 3, line 2), strike "180th" and substitute "210th".

(2) In SECTION 1 of the bill, in proposed Subsection (a)(1)(B), Section 253.153, Election Code (House committee report, page 3, line 6), strike "180th" and substitute "210th".

Floor Amendment No. 2

Amend C.S.S.B. 94 in SECTION 6 of the bill by striking proposed Subsection (f), Section 255.008, Election Code (House committee report, page 27, lines 1-3), and substituting the following:

(f) A person who violates this section or a rule adopted under this section is liable for a civil penalty not to exceed:

(1) \$15,000, for a candidate for a statewide judicial office or a specific-purpose committee for supporting such a candidate;

(2) \$10,000, for a candidate for chief justice or justice, court of appeals, or a specific-purpose committee for supporting such a candidate; or

(3) \$5,000, for a candidate for any other judicial office covered by Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate.

(g) Section 253.176 applies to the imposition and disposition of a civil penalty under this section.

Floor Amendment No. 1 on Third Reading

Amend C.S.S.B. 94 on third reading as follows:

(1) In SECTION 1 of the bill, in Section 253.161, Election Code, add new Subsections (c) and (d) to read as follows:

(c) A candidate, officeholder, or specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not use a political contribution to make a campaign expenditure for an office other than a judicial office or to make an office holder expenditure in

connection with an office other than a judicial office if the contribution was accepted while the candidate or officeholder:

(1) was a candidate for a judicial office; or

(2) held a judicial office, unless the person had become a candidate for another office.

(d) This section does not prohibit a candidate or officeholder from making a political contribution to another candidate or officeholder.

(2) In SECTION 1 of the bill, in the heading to Section 253.161, Election Code, strike "NONJUDICIAL OFFICE" and substitute "NONJUDICIAL OR JUDICIAL OFFICE".

(3) In SECTION 1 of the bill, in Section 253.161, Election Code, strike "(b)" and substitute "(d)".

The amendments were read.

Senator Ellis moved to concur in the House amendments to **S.B. 94**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

(President in Chair)

SENATE BILL 3 WITH HOUSE AMENDMENTS

Senator Bivins called **S.B. 3** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 3** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of motor carriers; providing civil, administrative, and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6675c to read as follows:

Art. 6675c. MOTOR CARRIER REGISTRATION

Sec. 1. DEFINITIONS. In this article:

(1) "Director" means the executive director of the department or the director's designee not below the rank of division or special office director.

(2) "Motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state.

(3) "Hazardous material" has the meaning assigned by 49 U.S.C. Section 5102.

(4) "Household goods" has the meaning assigned by 49 U.S.C. Section 10102.

(5) "Insurer" means a person, including a surety, authorized in this state to write lines of insurance coverage required by this article.

(6) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.

(7) "Vehicle requiring registration" means a vehicle described in Section 3(a) of this article.

Sec. 2. EXEMPTIONS. This article does not apply to:

(1) a motor vehicle registered under the single state registration system established under 49 U.S.C. Section 11506(c) when operating exclusively in interstate or international commerce;

(2) a motor vehicle registered as a cotton vehicle under Section 5o, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5o, Vernon's Texas Civil Statutes); or

(3) a motor vehicle the department by rule exempts because the vehicle is subject to comparable registration or a comparable safety program administered by another agency.

Sec. 3. REGISTRATION. (a) A motor carrier may not operate a commercial motor vehicle, as defined by Section 140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), or a tow truck on a road or highway of this state unless the carrier registers with the department under this article.

(b) An applicant for registration under this section must submit an application to the department on a form prescribed by the department. The application must include:

(1) the name of the owner and the principal business address of the motor carrier;

(2) the name and address of the legal agent for service of process of the carrier in this state, if different;

(3) a description of each vehicle requiring registration the carrier proposes to operate, including the motor vehicle identification number, make, and unit number;

(4) a statement as to whether the carrier proposes to transport household goods or hazardous materials;

(5) a declaration that the applicant has knowledge of all laws and rules relating to motor carrier safety, including this article, Article 6675d, Revised Statutes, and the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and

(6) any other information the department by rule determines is necessary for the safe operation of a carrier under this article.

(c) The application must be filed with the department along with:

(1) an application fee of \$100 plus a \$10 fee for each vehicle requiring registration the motor carrier proposes to operate;

(2) proof of insurance or financial responsibility as required by Section 4(d) of this article; and

(3) any insurance filing fee required under Section 4(f) of this article.

(d) The department shall register a motor carrier under this section if the carrier meets the requirements of Subsections (b) and (c) of this section. The department may deny a registration if the applicant has had a registration revoked under Section 7 of this article.

(e) The department shall issue a certificate containing a single registration number to a motor carrier, regardless of the number of vehicles requiring registration the carrier operates. The department shall issue a cab card as described by Section 5 of this article for each vehicle requiring registration the motor carrier operates.

(f) The department may conditionally accept an incomplete application for registration if the motor carrier meets the requirements of Subsection (c) of this section. The department shall notify the motor carrier of the incomplete status of the application and the information required for completion. If the motor carrier fails to provide the information within 45 days after the date the department provides notice of the incomplete status, the application is considered withdrawn and the department shall retain the fees required by Subsection (c)(1) of this section.

(g) A motor carrier required to register under this article shall supplement the carrier's application for registration before:

(1) the carrier transports hazardous materials or household goods if the carrier has not provided notice to the department in the carrier's initial or a supplemental application for registration;

(2) the carrier operates a vehicle requiring registration that is not listed on the carrier's initial or a supplemental application for registration; or

(3) the carrier changes the carrier's principal business address, legal agent, ownership, or name.

(h) The department shall prescribe the form of a supplemental application for registration made under Subsection (g) of this section. A motor carrier may not operate an additional vehicle requiring registration unless the carrier pays a registration fee of \$10 for each additional vehicle the motor carrier proposes to operate and shows the department evidence of insurance or financial responsibility in an amount at least equal to the amount set by the department under Section 4(a) of this article for the new vehicle. A motor carrier is not required to pay the \$10 registration fee for an additional vehicle that is a replacement for a previous vehicle for which the fee was paid. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier shows the department evidence of insurance or financial responsibility in an amount at least equal to the amount set by the department for a vehicle carrying household goods or hazardous materials under Section 4(a) of this article.

(i) A registration issued under this article is valid for one year. The department may adopt a system under which registrations expire at different times during the year. A motor carrier may renew a registration under this article by:

(1) supplementing the application with any new information required under Subsection (g) of this section;

(2) paying a \$10 fee for each vehicle requiring registration the carrier operates; and

(3) showing the department evidence of continuing insurance or financial responsibility in an amount at least equal to the amount set by the department under Section 4(a) of this article.

(j) The department may by rule provide for the temporary registration of an international motor carrier that provides the same proof of insurance as is required for a domestic motor carrier. The department may charge a fee for a temporary registration in an amount not to exceed the costs of administering this subsection.

(k) The department may not collect more than \$10 in equipment registration fees for a vehicle registered under both this article and Article 6675c-1, Revised Statutes.

Sec. 4. INSURANCE. (a) A motor carrier that is required to register under this article shall maintain liability insurance in an amount set by the department for each vehicle requiring registration the carrier operates. The department by rule may set the amount of liability insurance required at an amount that does not exceed the amount required for a motor carrier under federal regulations adopted under 49 U.S.C. Section 10927(a)(1). In setting the amount the department shall consider:

(1) the class and size of the vehicle; and

(2) the type of persons or cargo being transported.

(b) A motor carrier required to register under this article transporting household goods shall maintain cargo insurance in the same amount required for a motor carrier transporting household goods under federal law.

(c) A motor carrier may meet the insurance requirements of Subsections (a) and (b) of this section through self-insurance if the carrier demonstrates to the department that it can satisfy its obligations for bodily injury and property damage liability. The department shall adopt rules that, in the interest of public safety, provide for a responsible system of self-insurance for a motor carrier.

(d) A motor carrier that is required to register under this article must file with the department proof of insurance in the amounts required by Subsections (a) and (b) of this section, or proof of financial responsibility as described by Subsection (c) of this section, in a form prescribed by the department. The form must be filed:

(1) at the time of the initial registration;

(2) at the time of a subsequent registration, if the motor carrier was required to be continuously registered under this article and the carrier failed to maintain continuous registration;

(3) at the time a motor carrier changes insurers; and

(4) at the time a motor carrier changes ownership, as determined by rules adopted by the department.

(e) A motor carrier shall keep proof of insurance in a form approved by the department in the cab of each vehicle requiring registration the carrier operates.

(f) The department may charge a fee of \$100 for a filing made under Subsection (d) of this section.

(g) An insurer may not terminate coverage provided to a motor carrier registered under this article unless the insurer provides the department with notice at least 30 days before the date the termination takes effect.

(h) Notice under Subsection (g) of this section must be in a form approved by the department and the Texas Department of Insurance. The department shall notify the Department of Public Safety of each notice filed under Subsection (g) of this section.

(i) If an insurer for a motor carrier becomes insolvent, is placed in receivership, or had its certificate of authority suspended or revoked and if the carrier no longer has insurance coverage as required by this section, the carrier shall file with the department, not later than the 10th day after the date the coverage lapses:

(1) proof of insurance as required by Subsection (d) of this section; and

(2) an affidavit that:

(A) indicates that an accident from which the carrier may incur liability did not occur during the period when the coverage was not in effect; or

(B) contains a plan acceptable to the department indicating how the carrier will satisfy claims of liability against the carrier for an accident that occurred during the period when the coverage was not in effect.

(j) The department may not require a motor carrier required to register under this article to carry workers' compensation or similar insurance coverage. Notwithstanding any contrary provision of any law or regulation, a motor carrier required to register under this article may provide health and accident insurance coverage for its employees in lieu of workers' compensation insurance for any contract with state or local governmental entities or agencies or any political subdivisions thereof.

Sec. 5. CAB CARDS. (a) The department shall issue a cab card for each vehicle requiring registration operated by a motor carrier. The card must contain the registration number of the certificate issued under Section 3(c) of this article, the vehicle unit number, the vehicle identification number, and a statement that the vehicle is registered to operate under this article. The department shall issue cab cards annually at the time a motor carrier pays a registration fee under Section 3 of this article. The department may charge a fee of \$1 for each cab card issued. A motor carrier required to register under this article must keep the cab card in the cab of each vehicle requiring registration the carrier operates.

(b) The department may order a motor carrier to surrender a cab card if the carrier's registration is suspended or revoked under Section 7 of this article.

(c) If the department determines that the cab card system described in Subsection (a) of this section is no longer an efficient means of enforcing this article, the department may adopt by rule an alternative method that is accessible by law enforcement personnel in the field to allow for the

enforcement of the annual registration of vehicles for compliance with this article.

Sec. 6. ADMINISTRATIVE PENALTY BY TEXAS DEPARTMENT OF TRANSPORTATION. (a) The department may impose an administrative penalty against a motor carrier required to register under this article who violates a provision of Section 3, 4, 5, 8, or 12 of this article or a rule or order adopted under those sections. The department shall designate one or more employees to investigate and administer penalties under this section.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. If it is found that the motor carrier knowingly committed a violation, the penalty for a violation may not exceed \$15,000. If it is found that the motor carrier knowingly committed multiple violations, the aggregate penalty for the multiple violations may not exceed \$30,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, it may issue to the director a report that states the facts on which the determination is based and a recommendation on the imposition and amount of any penalty.

(e) Within 14 days after the date the report is issued, the department shall give written notice of the report to the motor carrier. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the motor carrier that the carrier has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the motor carrier receives the notice, the carrier in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. The department may, on the request of the person, hold an informal hearing to discuss a penalty recommended under this article. The department may modify a recommendation for penalty at the conclusion of the informal hearing.

(g) If the motor carrier accepts the determination and recommended penalty of the department, the director by order shall approve the determination and impose the recommended penalty.

(h) If the motor carrier requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the carrier. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may find that a violation has occurred and impose a penalty or may find that no violation occurred. The director may increase or decrease the amount of the penalty recommended by an administrative law judge within the limits prescribed by Subsection (b) of this section.

(i) The notice of the director's order given to the motor carrier under Chapter 2001, Government Code (Administrative Procedure Act), must include a statement of the right of the carrier to judicial review of the order.

(j) Within 30 days after the date the director's order becomes final as provided by Section 2001.144, Government Code, the motor carrier shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a motor carrier who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(l) If the department receives a copy of an affidavit under Subsection (k)(2) of this section, it may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The motor carrier who files an affidavit has the burden of proving that the carrier is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the motor carrier does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the motor carrier to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the motor carrier paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the motor carrier gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the motor carrier gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the carrier pays the amount.

(q) All proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 7. SUSPENSION AND REVOCATION OF REGISTRATION. (a) The department may suspend or revoke a registration issued under this article if:

(1) a motor carrier fails to maintain insurance as required by Section 4(a) or (b) of this article;

(2) a motor carrier fails to keep proof of insurance in the cab of each vehicle as required by Section 4(c) of this article;

(3) a motor carrier fails to register a vehicle requiring registration; or

(4) a motor carrier knowingly provides false information on any form filed with the department under this section.

(b) The Department of Public Safety may request that the department suspend or revoke a registration issued under this article if a motor carrier:

(1) has an unsatisfactory safety rating under 49 CFR Part 385; or

(2) has multiple violations of a provision of Article 6675d, Revised Statutes, a rule adopted under that article, or the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(c) Except as provided by Subsection (d) of this section, a suspension or revocation made under Subsection (a) or (b) of this section is a contested case under Chapter 2001, Government Code.

(d) The department may suspend or revoke a registration issued under this article without a hearing under Chapter 2001, Government Code, if:

(1) the department provides notice to the motor carrier of:

(A) the proposed suspension or revocation; and

(B) the right of the carrier to request a hearing under Chapter 2001, Government Code; and

(2) the motor carrier fails to provide the department with a written request for a hearing within 10 days after the date the carrier receives the notice described in Subdivision (1) of this subsection.

Sec. 8. ECONOMIC REGULATION. (a) Except as provided by this section, the department may not regulate the prices, routes, or services provided by a motor carrier.

(b) The department may establish voluntary standards for uniform cargo liability, uniform bills of lading or receipts for cargo being transported, and uniform cargo credit. A standard adopted under this section must be consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law.

(c) The department shall adopt rules to protect consumers who use the services of a motor carrier who is required to register under Section 3 of this article and who is transporting household goods that are at least as stringent as the corresponding provisions of 49 CFR Part 1056. The department may adopt rules under this subsection that are more stringent than the corresponding federal provisions. A motor carrier transporting household goods shall list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state. The department may adopt all such rules as are necessary to ensure that customers of household goods movers are protected from deceptive or unfair practices and unreasonably hazardous activities on the part of the movers. Such rules may include but are not limited to measures to:

(1) establish a formal process for resolving disputes over fees and damages apart from the method of mediation in Subsection (f) of this section;

(2) require a carrier to indicate clearly to consumers whether estimates are binding or nonbinding and disclose the maximum price a consumer could be required to pay; and

(3) create a centralized process for making complaints about a carrier which also allows consumers to inquire about a carrier's complaint record.

(d) A motor carrier who is required to register under Section 3 of this article and who is transporting household goods shall file a tariff with the department which establishes maximum charges for transportation services where in the course of such transportation a highway between two or more incorporated cities, towns, or villages is traversed. This requirement may be satisfied by filing a copy of the carrier's tariff governing interstate transportation services where in the course of such transportation a highway between two or more incorporated cities, towns, or villages is traversed. Tariffs filed pursuant to this section shall be made available for

public inspection at the department. In no event shall the department adopt rules regulating the rates, except as provided herein, or routes of household goods carriers.

(e) A rule adopted under Subsection (c) of this section authorizing a motor carrier transporting household goods to offer insurance for the full value of a customer's property does not constitute the unauthorized practice of the insurance business under Article 1.14-1, Insurance Code.

(f) All collective associations of motor carriers transporting household goods, or agents thereof, which have received approval for collective ratemaking agreements under Section 9(d) of this article shall provide a method of mediation for consumers to receive resolution through mediation of disputes over fees, damages, and services. All costs associated with such mediation shall be borne by the motor carriers, the agents thereof, or the association. All carriers and agents who are parties to collective agreements approved under Section 9(d) of this article must participate in consumer complaint resolution, including participation in the mediation process and advertisement of the availability of mediation in all contracts or estimate proposals. Any complaint mediation that is not resolved to the mutual agreement of all parties shall be reported to the department. Consumers shall be advised of their rights to seek resolution directly from the department. The department shall adopt rules that ensure such notification is available to consumers in a form and manner consistent with its duties under Subsection (c) of this section.

Sec. 9. ANTITRUST EXEMPTION. (a) Chapter 15, Business & Commerce Code, does not apply to a discussion or agreement between a motor carrier who is required to register under Section 3 of this article and who transports household goods and an agent of the carrier involving:

(1) the following matters if they occur under the authority of the principal carrier:

(A) rates for the transportation of household goods;

(B) access, terminal, storage, or other charges incidental to the transportation of household goods; or

(C) allowances relating to the transportation of household goods; or

(2) ownership of the carrier by the agent or membership on the board of directors of the carrier by the agent.

(b) An agent under Subsection (a) of this section may itself be a motor carrier required to register under Section 3 of this article.

(c) The department may by rule exempt a motor carrier required to register under Section 3 of this article from Chapter 15, Business & Commerce Code, for an activity relating to the establishment of joint line rates, routes, classifications, or mileage guides.

(d) Motor carriers who are required to register under Section 3 of this article and who transport household goods, and agents thereof, or both, may enter into collective ratemaking agreements between one or more such carriers or agents concerning the establishment and filing of maximum rates, classifications, rules, or procedures. Such agreements shall be submitted to the department for approval by any such carrier or agent, or

by any collective association of carriers or agents, and shall be approved by the department if the agreement provides that all meetings shall be open to the public and that notice of meetings shall be given to customers who are multiple users of household goods movers services. The department may withhold approval of the agreement if it finds and concludes, after notice and hearing, that the agreement fails to comply with these provisions. Unless disapproved by the department, the provisions of such agreement may be observed and Chapter 15, Business & Commerce Code, shall not apply to any motor carrier who is required to be registered under Section 3 of this article and who transports household goods with respect to activities performed under such agreement. An association of household goods motor carriers, or agents thereof, or both, may be designated by any motor carrier who is required to be registered under Section 3 of this article and who transports household goods as its collective maximum ratemaking association for the purpose of the required filing of a tariff for maximum rates required by Section 8 of this article.

Sec. 10. CRIMINAL PENALTY. (a) A person commits an offense if the person fails to:

- (1) register as required by Section 3 of this article;
- (2) maintain insurance as required by Section 4 of this article; or
- (3) keep a cab card in the cab of a vehicle as required by

Section 5(a) of this article.

(b) An offense under this section is a Class C misdemeanor.

Sec. 11. TOW TRUCK REGULATION BY MUNICIPALITY. (a) In addition to the registration requirements of this article, a municipality may regulate the operation of a tow truck to the extent allowed by federal law.

(b) A municipality may not require the registration of a tow truck that performs consent tows unless the owner of the tow truck has a place of business in the territory of the municipality.

(c) A municipality may require the registration of a tow truck that performs a non-consent tow, regardless of whether the owner of the tow truck has a place of business in the territory of the municipality.

(d) A municipality may not require a person who has a driver's license or commercial driver's license to obtain a license or permit for operating a tow truck unless the person performs non-consent tows in the territory of the municipality. The fee charged for a license may not exceed \$15.

(e) In this section:

(1) "Commercial driver's license" has the meaning assigned by Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).

(2) "Consent tow" means the towing of a vehicle with the consent of the owner or operator of the vehicle.

(3) "Driver's license" has the meaning assigned by Section 1, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

(4) "Non-consent tow" means the towing of a vehicle without the consent of the owner or operator of the vehicle.

Sec. 12. RULES. The department may adopt rules as necessary to administer this article.

Sec. 13. INSPECTION OF DOCUMENTS. (a) To investigate an alleged violation of Section 3 or 4 of this article, an officer or employee of the department who has been certified for the purpose by the director may enter a motor carrier's premises to copy or verify the correctness of documents, including operation logs and insurance certificates.

(b) The officer or employee may conduct the inspection:

- (1) at a reasonable time;
- (2) on stating the purpose of the inspection; and
- (3) by presenting to the motor carrier:

(A) appropriate credentials; and

(B) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

Sec. 14. RULES ADVISORY COMMITTEE. (a) The department shall appoint a rules advisory committee to advise the department on adoption of rules regarding:

- (1) the application of this article to tow trucks; and
- (2) the administration by the department of the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes).

(b) The department shall determine the size of the committee, but the committee must include one member who represents each of the following:

- (1) tow truck operators;
- (2) vehicle storage facility operators;
- (3) owners of property having parking facilities;
- (4) law enforcement agencies or municipalities;
- (5) insurance companies; and
- (6) the general public.

(c) Members of the committee serve at the pleasure of the department. A member of the committee is not entitled to compensation or reimbursement of expenses for serving as a member.

(d) The department may adopt rules to govern the operations of the advisory committee.

Sec. 15. PAYMENT OF FEES. The department may adopt rules regarding the method of payment of a fee under this article. The rules may authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department. The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 2. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6675c-1 to read as follows:

Art. 6675c-1. SINGLE STATE REGISTRATION. (a) The department shall, to the fullest extent practicable, participate in the single state registration system established under 49 U.S.C. Section 11506.

(b) The department may charge a motor carrier holding a permit issued under Subtitle IV, Title 49, United States Code, a fee for filing proof of insurance consistent with 49 U.S.C. Section 11506 not to exceed the maximum fee established under federal law.

(c) The department shall adopt rules that are consistent with federal law providing for:

(1) administrative penalties in the same manner as Section 6, Article 6675c, Revised Statutes; and

(2) suspension and revocation of registration in the same manner as Section 7, Article 6675c, Revised Statutes.

(d) A person commits an offense if the person violates a rule adopted under this article or fails to register a vehicle required to be registered under this article. An offense under this subsection is a Class C misdemeanor. Each day a violation of a rule occurs constitutes a separate offense under this subsection.

(e) The department may adopt rules regarding the method of payment of a fee under this article. The rules may authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department. The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 3. Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6675d to read as follows:

Art. 6675d. COMMERCIAL MOTOR VEHICLE SAFETY STANDARDS

Sec. 1. DEFINITIONS. In this article:

(1) "Commercial motor vehicle" has the meaning assigned by Section 140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(2) "Department" means the Department of Public Safety of the State of Texas.

(3) "Director" means the public safety director.

(4) "Federal hazardous material regulation" means a federal regulation in 49 CFR Parts 101-199.

(5) "Federal motor carrier safety regulation" means a federal regulation in 49 CFR Part 382, 385, or 386 or Parts 388-399.

(6) "Federal safety regulation" means a federal hazardous material regulation or a federal motor carrier safety regulation.

Sec. 2. CONFLICTS OF LAW. (a) A federal motor carrier safety regulation prevails over a conflicting provision of this article or a rule adopted by the director under this article.

(b) A safety rule adopted under this article prevails over a conflicting rule adopted by a local government, authority, or state agency or officer, other than a conflicting rule adopted by the Railroad Commission of Texas under Chapter 113, Natural Resources Code.

Sec. 3. AUTHORITY TO ADOPT RULES. (a) The director shall, after notice and a public hearing, adopt rules regulating:

(1) the safe transportation of hazardous materials; and

(2) the safe operation of commercial motor vehicles.

(b) A rule adopted under this article must be consistent with federal regulations, including federal safety regulations.

(c) The director may adopt all or part of the federal safety regulations by reference.

(d) Rules adopted under this article must ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely; and

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely.

(e) A motor carrier safety rule adopted by a local government, authority, or state agency or officer must be consistent with corresponding federal regulations.

Sec. 4. APPLICABILITY OF RULES. (a) Notwithstanding an exemption provided in the federal safety regulations, other than an exemption relating to intracity or commercial zone operations provided in 49 CFR Part 395, a rule adopted by the director under this article is uniformly applicable throughout this state.

(b) A rule adopted under this article applies to a vehicle that requires hazardous material placarding.

(c) A rule adopted under this article may not apply to a vehicle that is operated intrastate and that is:

(1) a machine generally consisting of a mast, engine, draw works, and chassis permanently constructed or assembled to be used and used in oil or water well servicing or drilling;

(2) a mobile crane that is an unladen, self-propelled vehicle constructed as a machine to raise, shift, or lower weight; or

(3) a vehicle transporting a seed cotton module.

Sec. 5. LIMITATIONS OF RULES. (a) A rule adopted under this article may not:

(1) prevent an intrastate operator from operating a vehicle up to 12 hours following eight consecutive hours off;

(2) require a person to meet the medical standards provided in the federal motor carrier safety regulations if the person:

(A) was regularly employed in this state as a commercial motor vehicle operator in intrastate commerce before August 28, 1989; and

(B) is not transporting property that requires a hazardous material placard; or

(3) require a person to maintain a government form, separate company form, operator's record of duty status, or operator's daily log for operations within a 150-mile radius of the normal work-reporting location if a general record of an operator's hours of service can be compiled from:

(A) business records maintained by the owner that provide the date, time, and location of the delivery of a product or service; or

(B) documents required to be maintained by law, including delivery tickets or sales invoices, that provide the date of delivery and the quantity of merchandise delivered.

(b) For purposes of Subsection (a)(3)(A) of this section, an owner's business records generally include:

(1) the time an operator reports for duty each day;

(2) the number of hours an operator is on duty each day;

(3) the time an operator is released from duty each day; and
(4) an operator's signed statement in compliance with 49 CFR
Part 395.8(j)(2).

Sec. 6. CERTIFICATION OF MUNICIPAL PEACE OFFICERS. (a) The department shall establish procedures, including training, for the certification of municipal peace officers to enforce this article.

(b) A peace officer of a municipality having a population of 100,000 or more or in a county bordering the United Mexican States is eligible to apply for certification under this section.

(c) The department by rule shall establish reasonable fees sufficient to recover from a municipality the cost of certifying its peace officers under this section.

Sec. 7. MUNICIPAL ENFORCEMENT REQUIREMENTS. (a) The department by rule may establish uniform standards for municipal enforcement of this article.

(b) A municipality that engages in enforcement under this article:

(1) shall pay all costs relating to the municipality's enforcement; and

(2) may not be considered, in the context of a federal grant related to this article:

(A) a party to a federal grant agreement; or

(B) a grantee under a federal grant to the department.

(c) Municipal enforcement under Section 8(b) of this article is not considered departmental enforcement for purposes of maintaining levels of effort required by a federal grant.

(d) In each fiscal year, a municipality may retain fines from the enforcement of this article in an amount not to exceed 110 percent of the municipality's actual expenses for enforcement of this article in the preceding fiscal year, as determined by the comptroller after reviewing the most recent municipal audit conducted under Section 103.001, Local Government Code. If there are no actual expenses for enforcement of this article in the most recent municipal audit, a municipality may retain fines in an amount not to exceed 110 percent of the amount the comptroller determines would be the municipality's actual expenses for enforcement of this article during the year.

(e) A municipality shall send the proceeds of all fines that exceed the limit imposed by Subsection (d) of this section to the state treasurer for deposit in the general revenue fund.

Sec. 8. DETENTION OF VEHICLES. (a) An officer of the department may enter or detain on a highway a motor vehicle that is subject to this article.

(b) A peace officer who is certified under Section 6 of this article may detain on a highway within the municipality a motor vehicle that is subject to this article.

Sec. 9. INSPECTION OF PREMISES. (a) An officer or employee of the department who has been certified for the purpose by the director may enter a motor carrier's premises to:

(1) inspect real property, including a building, or equipment; or
(2) copy or verify the correctness of documents, including records
or reports, required to be kept or made by rules adopted under this article.

(b) The officer or employee may conduct the inspection:

- (1) at a reasonable time;
- (2) on stating the purpose of the inspection; and
- (3) by presenting to the motor carrier:

(A) appropriate credentials; and

(B) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

Sec. 10. CRIMINAL OFFENSE. (a) A person commits an offense if the person:

- (1) violates a rule adopted under this article; or
- (2) does not permit an inspection authorized under Section 9 of this article.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day a violation continues under Subsection (a)(1) of this section or each day a person refuses to allow an inspection described under Subsection (a)(2) of this section constitutes a separate offense.

Sec. 11. CIVIL PENALTY. (a) A person who does not permit an inspection authorized by Section 9 of this article is liable to the state for a civil penalty not to exceed \$1,000.

(b) The attorney general may sue to collect the penalty in:

(1) the county in which the violation is alleged to have occurred; or

(2) Travis County.

(c) The penalty provided by this section is in addition to the penalty provided by Section 10 of this article.

(d) Each day a person refuses to permit an inspection described by Subsection (a) constitutes a separate violation for purposes of imposing a penalty.

Sec. 12. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who violates:

(1) a rule adopted under this article; or

(2) a provision of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) that the department by rule subjects to administrative penalties.

(b) To be designated as subject to administrative penalties under Subsection (a)(2) of this section, a provision must relate to the safe operation of a commercial motor vehicle.

(c) A penalty under this section may not exceed the maximum penalty provided for violations of a similar federal safety regulation.

(d) A penalty under this section shall be administered in the same manner as a penalty under Section 6, Article 6675c, Revised Statutes.

Sec. 13. SUIT FOR INJUNCTION. (a) The attorney general shall sue to enjoin a violation or a threatened violation of a rule adopted under this article if requested by the director.

(b) The suit must be brought in the county in which the violation or threat is alleged to have occurred.

(c) The court may grant the director, without bond or other undertaking:

(1) a prohibitory or mandatory injunction, including a temporary restraining order; or

(2) after notice and hearing, a temporary or permanent injunction.

Sec. 14. SAFETY AUDIT PROGRAM. The department shall implement and enforce a safety audit program similar to the federal program established under 49 CFR Part 385 for a person who owns or operates a commercial motor vehicle not subject to safety audits by the federal government.

Sec. 15. RULES. The department may adopt rules as necessary to administer this article.

SECTION 4. Chapter 6, Title 25, Revised Statutes, is amended by adding Article 911m to read as follows:

Art. 911m. MOTOR TRANSPORTATION BROKERS

Sec. 1. DEFINITION. In this article, "motor transportation broker" means:

(1) a person who sells, offers for sale, provides, or negotiates for the transportation of cargo by a motor carrier operated by another person; or

(2) a person who aids and abets a person in performing an activity described in Subdivision (1) of this section.

Sec. 2. EXCEPTION. This article does not apply to a motor transportation broker that is registered as a motor carrier under Article 6675c, Revised Statutes, or holding a permit issued under Subtitle IV, Title 49, United States Code.

Sec. 3. BOND REQUIRED. (a) A person may not act as a motor transportation broker unless the person provides a bond to the Texas Department of Transportation as required by this section.

(b) The bond must:

(1) be in an amount of at least \$10,000 executed by a bonding company authorized to do business in this state;

(2) be payable to this state or a person to whom the motor transportation broker provides services; and

(3) be conditioned on the performance of the contract for transportation services between the broker and the person for whom services are provided.

(c) The department may charge the broker a bond review fee in an amount not to exceed the cost of reviewing the bond.

Sec. 4. CRIMINAL PENALTY. (a) A person commits an offense if the person fails to provide a bond as required by this section.

(b) An offense under this section is a Class C misdemeanor.

Sec. 5. PAYMENT OF FEES. The department may adopt rules regarding the method of payment of a fee under this article. The rules may authorize the use of electronic funds transfer or a valid credit card

issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department. The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 5. Section 41.03, Alcoholic Beverage Code, is amended to read as follows:

Sec. 41.03. ELIGIBILITY FOR PERMIT. A carrier permit may be issued to:

- (1) a water carrier;
- (2) an airline;
- (3) a railway; ~~or~~

(4) a motor carrier registered under Article 6675c, Revised Statutes; or

(5) ~~a common carrier operating [under a certificate of convenience and necessity issued by the Railroad Commission of Texas or]~~ under a certificate issued by the Interstate Commerce Commission.

SECTION 6. Section 42.03, Alcoholic Beverage Code, is amended to read as follows:

Sec. 42.03. APPLICATION OF MOTOR CARRIER LAWS. A person desiring to transport liquor for hire ~~[must first secure a certificate or permit from the Railroad Commission in accordance with the applicable motor carrier laws, and he]~~ shall comply with the provisions of the motor carrier laws when engaging in the business of transporting liquor for hire.

SECTION 7. Section 67.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 67.01. AUTHORIZED ACTIVITIES. A holder of an importer's license may import beer into this state only from the holder of a nonresident manufacturer's license. The beer may be transported by a railway carrier, a motor carrier registered under Article 6675c, Revised Statutes, or by a common motor carrier operated under a certificate ~~[of convenience and necessity]~~ issued by ~~[the Railroad Commission of Texas or by]~~ the Interstate Commerce Commission. Each carrier must hold a carrier's permit issued under Chapter 41 of this code. All provisions of Chapter 41 relating to the transportation of liquor also apply to the transportation of beer. A carrier may not transport beer into the state unless it is consigned to an importer.

SECTION 8. Section 201.073, Labor Code, is amended to read as follows:

Sec. 201.073. DELIVERY SERVICE; NEWSPAPER DELIVERY SERVICE. In this subtitle, "employment" does not include:

(1) service performed for compensation by an individual for a private for-profit delivery service ~~[that operates only in a commercial zone as defined and prescribed by the Railroad Commission of Texas under Section 1(g), Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes),]~~ if the individual:

- (A) may accept or reject a job from the delivery service;
- (B) is free from control by the delivery service as to when the individual works;

(C) is compensated for each delivery or is compensated based on factors relating to the work performed, including receipt of a percentage of a rate schedule;

(D) controls solely the opportunity for profit or loss;

(E) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(F) determines the method of performing the service, including selection of routes and order of deliveries;

(G) is responsible for completion of a specific job and is liable for failure to complete the job;

(H) enters into a contract that specifies the relationship of the individual to the delivery service to be that of an independent contractor and not an employee; and

(I) provides the vehicle used to perform the service; or

(2) service by an individual younger than 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any location for subsequent delivery or distribution.

SECTION 9. Effective September 1, 2000, Section 152.089, Tax Code, is amended to read as follows:

Sec. 152.089. ~~EXEMPT VEHICLES [TAXED BY OTHER LAW]~~. (a) The taxes imposed by this chapter do not apply to interstate motor vehicles, trailers, and semitrailers ~~[on which tax is imposed by Chapter 157 of this code, and the taxes imposed by Chapter 157 of this code do not apply to motor vehicles on which tax is imposed by this chapter]~~; provided that if a motor vehicle, trailer, or semitrailer ~~[on which tax is imposed by Chapter 157 of this code]~~ ceases to be used as an interstate motor vehicle, trailer, or semitrailer within one year of either the date the vehicle was purchased in Texas or the date the vehicle was first brought into Texas, the taxes imposed by this chapter will apply at that time.

(b) If a motor vehicle is no longer leased for interstate use, the owner shall notify the comptroller on a form provided by the comptroller. The owner shall pay a tax at the rate prescribed by Section 152.021(b) on the motor vehicle based on the owner's book value of the motor vehicle.

(c) In this section, "interstate motor vehicle" means a motor vehicle that is operated in this state and another state or country and for which registration fees could be apportioned if the motor vehicle were registered in a state or province of a country that is a member of the International Registration Plan. The term includes a bus used in transportation of chartered parties if the bus meets all the standards required of other motor vehicles for apportioned registration fees. The term does not include a vehicle leased for less than 181 days or a vehicle that has Texas license plates and does not operate under the International Registration Plan.

SECTION 10. Subdivision (3), Section 154.001, Tax Code, is amended to read as follows:

(3) "Common carrier" means a motor carrier registered under Article 6675c, Revised Statutes, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or a successor

agency to the Interstate Commerce Commission [that transports goods owned by others for hire and is regulated by the Railroad Commission of Texas].

SECTION 11. Subdivision (3), Section 155.001, Tax Code, is amended to read as follows:

(3) "Common carrier" means a motor carrier registered under Article 6675c, Revised Statutes, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or a successor agency to the Interstate Commerce Commission ~~[that transports goods owned by others for hire and is regulated by the Railroad Commission of Texas].~~

SECTION 12. Article 883, Revised Statutes, is amended to read as follows:

Art. 883. LIABILITY FIXED; EXCEPTIONS FOR RATES BASED ON VALUE; EVIDENCE; NOTICE OF CLAIM MAY BE REQUIRED. Railroad companies, and other carriers of passengers, goods, wares, and merchandise for hire, within this state, on land, or in boats or vessels on the waters entirely within this state, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation or in any other manner whatsoever, unless the limitation or restriction is in conspicuous writing in a bill of lading, a contract for transportation, or other written arrangement for transportation~~[; provided, however, that the provisions hereof respecting liabilities of carriers as it exists at common law for loss, damage, or injury to baggage and personal effects of passengers transported incident to the carriage of persons, goods, wares, and merchandise shall not apply to property received for transportation concerning which the carriers shall have been or shall hereafter be expressly authorized or required by order of the Railroad Commission of Texas to establish and maintain rates dependent upon the value declared in writing by the shipper of the property or agreed upon in writing as the released value of the property, in which case, such declaration or agreement shall have no effect other than to limit liability and recovery to an amount not exceeding the value so declared or released, and so far as relates to values, shall be valid and is not hereby prohibited. The Railroad Commission of Texas is hereby authorized to fix and establish just and reasonable rates for transportation of goods, wares, and merchandise described by commodities or articles or by generic grouping of commodities or articles, and the baggage and personal effects of passengers, dependent upon the value thereof declared in writing, or agreed upon in writing by the shipper or passenger as the agreed value, under the circumstances and conditions surrounding such transportation].~~ Provided further, that a requirement of a notice or claim consistent with the provisions of Section 16.071, Civil Practice and Remedies Code [Article 5546 of the Revised Civil Statutes of Texas, 1925, as heretofore amended], as a condition precedent to the enforcement of any claim or loss, damage and delay or either, or any of them, whether inserted in a bill of lading or other contract or arrangement for carriage, or otherwise provided, shall be valid and is not hereby prohibited.

SECTION 13. Article 883(a), Revised Statutes, is amended to read as follows:

Art. 883(a). A ~~[No specialized]~~ motor carrier of household goods, as defined by 49 U.S.C. Section 10102, may not ~~[or other carrier for hire, including the carriers referred to in said Article 883, shall]~~ be required to accept for transportation household goods~~[], personal effects or used office furniture and equipment;]~~ unless the shipper or owner thereof or his agent shall first declare in writing the reasonable value thereof. The carrier shall not be liable in damages for an amount in excess of such declared value for the loss, destruction or damage of such property. ~~[The Railroad Commission shall establish adequate rates consistent with such declared values to be assessed and collected by such carriers. If the Railroad Commission fails to establish such rates, then in that event such carriers are authorized to collect reasonable transportation charges consistent with the declared value of such property.]~~

SECTION 14. Article 911k, Revised Statutes, is amended to read as follows:

Art. 911k. MOTOR CARRIERS EXEMPT FROM GROSS RECEIPTS TAXES. A motor bus carrier or ~~[common or contract]~~ motor carrier transporting persons or property for hire ~~[subject to regulation by the railroad commission]~~ is exempt from any occupation tax measured by gross receipts imposed by any law of this state.

SECTION 15. Subsection (a), Section 8, Chapter 65, Acts of the 67th Legislature, Regular Session, 1981 (Article 6519c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as provided by ~~[Subsection (c), Section 17, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes), and by]~~ Section 131.231, Natural Resources Code, all taxes, license fees, permit fees, examination fees, and truck registration fees collected or received by the Railroad Commission of Texas shall be deposited to the credit of the General Revenue Fund.

SECTION 16. Subsection (c), Section 4, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The word "Project" or the words "Turnpike Project" shall mean any express highway or turnpike which the Authority may at any time determine to construct under the provisions of this Act and any improvement, extension, or expansion to that highway or turnpike and includes facilities to relieve traffic congestion and to promote safety, and all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, and administration, storage and other buildings which the Authority may deem necessary for the operation of the Project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the Project; provided, that the location of a Project must before final designation, be approved by the State Highway Commission. Provided, however, any "Project" or "Turnpike Project" which the

Authority may construct under the authority of this Act shall at all times be deemed a public highway [~~within the meaning of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941, and to that end no motor bus company, common carrier motor carrier, specialized motor carrier, contract carrier or other motor vehicle operation for compensation and hire shall be conducted thereon except in accordance with the terms and provisions of Chapter 270, page 399, Acts, Fortieth Legislature, 1927, as amended by Chapter 78, page 196, Acts, Forty-first Legislature, First Called Session, 1929, and Chapter 314, page 698, Acts, Forty-first Legislature, 1929, as amended by Chapter 277, page 480, Acts, Forty-second Legislature, 1931, as amended by Chapter 290, page 463, Acts, Forty-seventh Legislature, 1941].~~

SECTION 17. Section 2A, Chapter 18, General Laws, Acts of the 41st Legislature, 5th Called Session, 1930 (Article 6675a-6e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2A. To expedite and facilitate, during the harvesting season, the harvesting and marketing of farm products produced in this State, the Department is authorized to issue to a nonresident owner a 30-day temporary registration permit for any truck, truck tractor, trailer or semitrailer to be used in the movement of such farm commodities from the place of production to market, storage or railhead, not more than seventy-five (75) miles distant from such place of production, or to be used in the movement of machinery used to harvest any of the commodities named in this section.

To expedite and facilitate, during the harvesting season, the harvesting and movement of farm products produced outside of Texas but marketed or processed in Texas or moved to points in Texas for shipment, the Department is authorized to issue to a nonresident owner a 30-day temporary registration permit for any truck, truck tractor, trailer or semitrailer to be used in the movement of such farm commodities from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than eighty (80) miles distant from such point of entry into Texas. All mileages and distances referred to herein are State Highway mileages. Before such temporary registration provided for in this paragraph may be issued, the applicant must present satisfactory evidence that such motor vehicle is protected by such insurance and in such amounts as may be described in Section 5 of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended, and such policies must be issued by an insurance company or surety company authorized to write Motor Vehicle Liability Insurance in this State unless the applicant is unable to obtain the insurance coverage from an insurance company authorized to write the coverage in this State, in which case, the applicant, with the Department's approval, may obtain the coverage from a surplus

lines insurer that meets the requirements of Article 1.14-2, Insurance Code, and rules adopted by the State Board of Insurance under that article; and that such vehicle has been inspected as required under the Uniform Act Regulating Traffic on Highways in Texas (Article XV of Article 6701d, Vernon's Texas Civil Statutes) as it is now written or as it may hereafter be amended.

The Department is authorized to prescribe the form of the application and the information to be furnished therein for such temporary registration permits. If the application is granted, the Department shall issue a special distinguishing insignia which must be attached to such vehicle in lieu of the regular Texas Highway registration plates. Such special insignia shall show its expiration date. The temporary registration permit fee shall be one-twelfth (1/12) of the annual Texas registration fee for the vehicle for which the special permit is secured.

The temporary permits herein authorized shall be issued only when the vehicle for which said permit is issued is legally registered in the nonresident owner's home state or country for the current registration year; and said permit will remain valid only so long as the home state or country registration is valid; but in any event the Texas temporary registration permit will expire 30 days from the date of issuance. Not more than three (3) such temporary registration permits may be issued to a nonresident owner during any one (1) vehicle registration year in the State of Texas. A vehicle registered under the terms of this Act may not be operated in Texas after the expiration of the temporary permit unless the nonresident owner secures a second temporary permit as provided above, or unless the nonresident owner registers the vehicle under the appropriate Texas vehicular registration statutes, applicable to residents, for the remainder of the registration year. No such vehicle may be registered with a Texas farm truck license.

Any person who shall transport any of the commodities described in this Act, under a temporary permit provided for herein, to a market, place of storage, processing plant, railhead or seaport, which is a greater distance from the place of production of such commodity in this State, or the point of entry into the State of Texas than is provided for in said temporary permit, or shall follow a route other than that prescribed by the Highway Commission, shall be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200).

Nothing in this Act shall be construed to authorize such nonresident owner or operator to operate or cause to be operated any of such vehicles in this State in violation of ~~[Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes) or]~~ any of the other laws of this State.

SECTION 18. Subdivision (1), Section 2, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(1) "Commission" means the ~~[Railroad Commission of]~~ Texas Department of Transportation.

SECTION 19. Subsection (c), Section 4, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(c) The commission may impose and collect a fee for a license in an amount sufficient to recover the commission's costs of administering this Act. Fees collected under this subsection shall be deposited in ~~[a special account in]~~ the general revenue fund. The department may adopt rules regarding the method of payment of a fee under this Act. The rules may authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department. The rules may require the payment of a discount or service charge for a credit card payment in addition to the fee [that may be appropriated only to the commission for the administration of this Act].

SECTION 20. Subsection (b), Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(b) The notice must be sent by certified mail, return receipt requested, and must contain:

- (1) the date the vehicle was accepted for storage;
- (2) the first day for which a storage fee is assessed;
- (3) the daily storage rate;
- (4) the type and amount of all other charges to be paid when the vehicle is claimed;
- (5) the full name, street address, and telephone number of the facility;
- (6) the hours during which the owner may claim the vehicle; and
- (7) the facility license number preceded by "Texas Department of Transportation [~~"Railroad Commission of Texas"~~] Vehicle Storage Facility License Number."

SECTION 21. Section 15, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 15. USE OF FEES. The commission shall remit all fees collected under this article to the State Treasurer for deposit in the State Treasury to the credit of the general revenue [a] fund ~~[to be used, subject to legislative appropriation, for administering this article].~~

SECTION 22. Subsection (2), Section C, Article 6701-1/2, Revised Statutes, is amended to read as follows:

(2) The Texas [State] Department of [~~Highways and Public~~] Transportation may issue single trip permits to owners of manufactured homes provided that the ownership of the manufactured home and of the towing vehicle is shown to be the same person by the title to the home and to the towing vehicle or that a lease ~~[duly filed pursuant to Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6701c-1, Vernon's Texas Civil Statutes);]~~ shows the owner of the manufactured home to be the lessee of the towing vehicle. Single trip permits may also be issued to installers registered with the Texas Department of Licensing and Regulation and to motor carriers registered under Article 6675c, Revised Statutes, [~~Labor and Standards~~] for the

transportation of manufactured homes [~~over routes between points when such transportation would be excluded from regulation under Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes)]~~. The owner, motor carrier, or installer must have proof of insurance coverage in force as required in Section H of this article.

SECTION 23. Subsection (e), Section 3, Chapter 41, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701a, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The requirement of a bond contained in this section does not apply to the driving or transporting of farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment. The bond requirement does apply to the delivery of farm equipment to a farm equipment dealer. The requirement of a bond does not apply to a vehicle or equipment operated by a motor carrier registered under Article 6675c, Revised Statutes.

SECTION 24. Section 3, Article 6701b-1, Revised Statutes, is amended to read as follows:

Sec. 3. EXCEPTIONS. This article does not apply to:

(1) [~~a commercial motor vehicle operated under the control, supervision, or authority of a motor bus company that has a certificate issued by the Railroad Commission of Texas under Chapter 270, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 911a, Vernon's Texas Civil Statutes); or~~

(2) [~~a commercial motor vehicle, truck-tractor, or road-tractor operated under the control, supervision, or authority of a motor carrier that is subject to Section 18 or exempt under Section 18a, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes); or~~

(3) [~~a commercial motor vehicle, truck-tractor, or road-tractor required to be registered under Section 113.131, Chapter 113, Natural Resources Code; or~~

(2) [(4)] any commercial motor vehicle, truck-tractor, or road-tractor registered under Section 6a, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-6a, Vernon's Texas Civil Statutes); or

(3) [(5)] a commercial motor vehicle, truck-tractor, or road-tractor operated under the control, supervision, or authority of a person through the execution of a bona fide lease, memorandum, or agreement in compliance with Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701c-1, Vernon's Texas Civil Statutes); or

(4) [(6)] any commercial motor vehicle, truck-tractor, or road-tractor operated in private carriage that is subject to Title 49, Code of Federal Regulations, Part 397.21; or

(5) [(7)] a commercial motor vehicle, truck-tractor, or road-tractor operated under the direct control, supervision, or authority of a bona fide public utility, as recognized by the Texas Legislature, that is otherwise visibly marked; or

(6) [(8)] any commercial motor vehicle, truck-tractor, or road-tractor transporting timber products in their natural state from first point of production or harvest to first point of processing.

SECTION 25. Section 140A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) In this section:

(1) "Commercial motor vehicle" means any self-propelled or towed vehicle, except a farm vehicle with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds, used on a public highway to transport passengers or cargo [property] when:

(A) the vehicle or combination of vehicles has a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds;

(B) the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. app. Sections 1801-1813).

(2) "Commission" means the Public Safety Commission.

(3) "Farm vehicle" has the meaning assigned by the Federal Motor Carrier Safety Regulations under Title 49, Code of Federal Regulations.

(4) "Federal safety regulations" means the Federal Motor Carrier Safety Regulations under Title 49, Code of Federal Regulations.

(g) The commission by rule may exempt certain types of commercial motor vehicles from the application of this section. A vehicle may be exempted only if the vehicle:

(1) was manufactured before September 1, 1995;

(2) is operated only temporarily on a highway of this state and at a speed of less than 30 miles per hour; and

(3) complies with the requirements of Section 140 of this Act and any applicable provision in Title 49, Code of Federal Regulations.

SECTION 26. Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Section 1B to read as follows:

Sec. 1B. "Oil field equipment" means machinery, materials, and equipment used in the construction, operation, and maintenance of facilities, including pipelines, that are used for the discovery, production, and processing of natural gas or petroleum.

SECTION 27. Subdivision (1), Subsection (c), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) No motor vehicle, other than a truck-tractor, shall exceed a length of forty-five (45) feet. Except as provided in Subsection (c-1) of this section, it shall be lawful for any combination of not more than three (3) vehicles to be coupled together including, but not limited to, a

truck and semi-trailer, truck and trailer, truck-tractor and semi-trailer and trailer, or a truck-tractor and two trailers, provided such combination of vehicles, other than a truck-tractor combination, shall not exceed a length of sixty-five (65) feet, unless such vehicle or combination of vehicles is operated exclusively within the limits of an incorporated city or town; and unless, in the case of any combination of such vehicles, same be operated by municipal corporations in adjoining suburbs wherein said municipal corporation has heretofore been using such or like equipment in connection with an established service to such suburbs of the municipality. The length limitations in this subdivision do not apply to a truck-tractor, truck-tractor combination, or a truck-trailer combination exclusively transporting oil field equipment[, as that term is defined by Subsection (i) of Section 1, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes)]. Motor buses as defined in Section 1, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-1, Vernon's Texas Civil Statutes), exceeding thirty-five (35) feet in length, but not exceeding forty-five (45) feet in length, may be lawfully operated over the highways of this state if such motor buses are equipped with air brakes and have either three or more axles or a minimum of four (4) tires on the rear axle. The limitations in this subdivision shall not apply to any house trailer or to any combination of a house trailer and a motor vehicle, but no house trailer and motor vehicle combination shall exceed a total length of sixty-five (65) feet. "House trailer" as used herein means a living quarters equipped and used for sleeping and eating and which may be moved from one location to another over a public highway by being pulled behind a motor vehicle. No house trailer, as the same is defined herein, shall be entitled to the exemption contained in this Subsection unless the owner thereof shall have paid all taxes, including ad valorem taxes, and fees due and payable under the laws of this state, levied on said house trailer.

SECTION 28. Subsection (g), Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) An applicant for a permit under this section, other than an applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips, cotton, or agricultural products in their natural state or an applicant who is a motor carrier registered under Article 6675c, Revised Statutes, shall file with the department an irrevocable letter of credit issued by a financial institution whose deposits are guaranteed by the Federal Deposit Insurance Corporation or a blanket bond in the amount of \$15,000 payable to the department and to the counties of this state and conditioned that the applicant will pay to the department for any damage to a state highway and will pay to a county for any damage to a road or bridge of such county caused by the operation of any vehicle for which a permit is issued with a gross weight or axle weight that exceeds the weights authorized by Section 5 or Section 5 1/2 of this Act. The bond or letter of credit shall include an undertaking by the issuer to notify the department and the applicant in writing promptly after any payment is

made by the issuer in respect of the bond or letter of credit. If payment is made by the issuer in respect of the bond or letter of credit and the applicant does not file with the department a replacement bond or letter of credit in the full amount of \$15,000, or a notification from the issuer of the existing bond or letter of credit that the existing bond or letter of credit has been restored to the full \$15,000, within 30 days after the date of such payment, then all permits held by the applicant under this section shall automatically expire.

SECTION 29. Section 33, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 33. EXCEPTIONS. This Act shall not apply with respect to any motor vehicle owned by the United States, the State of Texas or any political subdivision of this state, or any municipality therein ~~[except as provided in Section 35]~~, nor to the officers, agents or employees of the United States, the State of Texas, or any political subdivision of the state, while driving said vehicle in the course of their employment; provided, however, that the operator of every motor vehicle specified herein shall comply with the provisions of Section 4 of this Act; nor, except for Sections 4 and 26 of this Act, with respect to any motor vehicle which is subject to the requirements of Article 6675c, Revised Statutes [Articles 911a (Sec. 11) and 911b (Sec. 13) of the Revised Civil Statutes of Texas]; provided, however, that nothing in this Act shall be construed so as to exclude from this Act its applicability to taxicabs, jitneys, or other vehicles for hire, operating under franchise or permit of any incorporated city, town or village.

SECTION 30. Subsection (c), Section 10, Article 9103, Revised Statutes, is amended to read as follows:

(c) This article does not apply to public warehouses owned, controlled, operated, or leased by motor carriers under Article 6675c, Revised Statutes [licensed by and within the jurisdiction of the Railroad Commission of Texas under the provisions of Article 911b, Vernon's Texas Civil Statutes], or their agents.

SECTION 31. (a) Effective September 1, 1995, the following laws are repealed:

- (1) Section 361.431, Health and Safety Code;
- (2) Section 51.012, Election Code;
- (3) Chapter 270, Acts of the 40th Legislature, Regular Session, 1927 (Article 911a, Vernon's Texas Civil Statutes);
- (4) Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes);
- (5) Chapter 1, page 672, General Laws, Acts of the 46th Legislature, 1939 (Article 911d, Vernon's Texas Civil Statutes);
- (6) Chapter 544, Acts of the 59th Legislature, Regular Session, 1965 (Article 911f, Vernon's Texas Civil Statutes);
- (7) Article 911h, Revised Statutes;
- (8) Chapter 88, Acts of the 60th Legislature, Regular Session, 1967 (Article 911i, Vernon's Texas Civil Statutes);

(9) Chapter 114, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 911j, Vernon's Texas Civil Statutes);

(10) Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes);

(11) Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6701c-1, Vernon's Texas Civil Statutes);

(12) Subsection (o), Section 2, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);

(13) Section 139, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and

(14) Subsection (e), Section 5-2/3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), as added by Chapter 689, Acts of the 68th Legislature, Regular Session, 1983.

(b) Effective September 1, 2000, Chapter 157, Tax Code, is repealed.

SECTION 32. (a) Any appropriation made to the Railroad Commission of Texas for the biennium ending August 31, 1997, for the administration of a law repealed by Section 31 of this Act is transferred to:

(1) the Texas Department of Transportation, if the appropriation was for an activity previously administered by the railroad commission that is now administered by the Texas Department of Transportation under Section 1 of this Act; or

(2) the Department of Public Safety of the State of Texas, if the appropriation was for an activity previously administered by the railroad commission that is now administered by the Department of Public Safety under Section 3 of this Act.

(b) A rule adopted by the Railroad Commission of Texas under a law repealed by Section 31 of this Act before the effective date of this Act that is not inconsistent with this Act remains in effect as a rule of the Texas Department of Transportation or the Department of Public Safety until superseded by a rule adopted by the appropriate department.

(c) A registration that is valid on the effective date of this Act remains valid until it expires or until the Texas Department of Transportation suspends or revokes the registration. In renewing a registration, the Texas Department of Transportation shall, to the extent possible, assign a registration number to a motor carrier that is identical to the prior number issued by the Railroad Commission of Texas.

(d) A proceeding to suspend or revoke a registration issued under a law repealed by Section 31 of this Act, or to impose a penalty under a law repealed by Section 31 of this Act, that is pending before the Railroad Commission of Texas on the effective date of this Act is transferred without change in status to the Texas Department of Transportation on the effective date of this Act unless registration for the activity is no longer required or a penalty may no longer be imposed. If registration is no longer required or a penalty may no longer be imposed, the proceeding is dismissed on the effective date of this Act.

(e) All records of the Railroad Commission of Texas involving the registration of a motor carrier under a law repealed by Section 31 of this Act that pertain to registration or safety requirements as required by this Act are transferred to the Texas Department of Transportation or the Department of Public Safety on the effective date of this Act.

(f) A proceeding to suspend or revoke a license issued under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) or to impose a penalty under that Act that is pending before the Railroad Commission of Texas on the effective date of this Act is transferred without change in status to the Texas Department of Transportation on the effective date of this Act. All records of the Railroad Commission of Texas involving licensing of a facility under the Vehicle Storage Facility Act are transferred to the Texas Department of Transportation on the effective date of this Act. A rule adopted by the Railroad Commission of Texas under the Vehicle Storage Facility Act remains in effect as a rule of the Texas Department of Transportation until superseded by a rule adopted by the department.

(g) The Railroad Commission of Texas, the Texas Department of Transportation, and the Department of Public Safety shall adopt a memorandum of understanding regarding the transfer of administrative duties that occurs under this Act. Notwithstanding any other law, the memorandum may provide for the lateral transfer, without the necessity of posting a job vacancy notice, of one or more of the employees whose positions will be eliminated by this Act and whose current duties and functions approximate those required by the Texas Department of Transportation or the Department of Public Safety to implement this Act. For any position that is posted, the Texas Department of Transportation and the Department of Public Safety may give preference to a person employed in a similar position at the Railroad Commission of Texas.

(h) On the effective date of this Act, the Motor Carrier Act enforcement fund account in the general revenue fund is abolished and any money in the account is transferred to the undedicated portion of the general revenue fund.

(i) Not later than January 1, 1996, the Texas Department of Transportation shall review all rules adopted by the department to enforce this Act.

(j) Not later than January 1, 1996, the Department of Public Safety shall review all rules adopted by the department to enforce this Act.

(k) After conducting a review as required by Subsection (i) or (j) of this section, the Texas Department of Transportation and the Department of Public Safety shall adopt new rules as appropriate.

(l) All certificates of public convenience and necessity and permits issued to contract carriers under Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), are canceled.

SECTION 33. Not later than January 1, 1996, all state agencies shall review existing regulations which affect motor carriers and seek means to improve resource utilization and enforcement as well as seek means to

improve the industry's productivity and voluntary compliance in such areas as vehicle registration and inspection, reporting requirements, issuance of temporary permits, and filing of credentials. Such review shall include efforts to eliminate duplicitious regulations.

SECTION 34. This Act takes effect September 1, 1995.

SECTION 35. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend C.S.S.B. 3 by striking section (j) on page 8 and substituting the following:

(j) Notwithstanding any contrary provision of any law or regulation, a motor carrier required to register under this article shall protect its employees by obtaining workers' compensation insurance coverage as defined under the Texas Workers' Compensation Act (Article 8308.01 et seq., Vernon's Texas Civil Statutes) or accidental insurance coverage in an amount fixed by the Texas Department of Transportation from a reliable insurance company or companies authorized to write such policies in this state approved by the department. The amount fixed by the department may not be less than \$300,000 for medical expenses for no less than 104 weeks, \$100,000 for accidental death and dismemberment, 70% of the employee's pre-injury income for no less than 104 weeks when compensating for loss of income, and \$500 for the maximum weekly benefit.

Floor Amendment No. 2

1. Amend C.S.S.B. 3 as follows:

On page 47, line 26 and page 52, line 24 insert the words "or Article 6675c-1" between "Article 6675c" and the comma.

2. Amend C.S.S.B. 3 on page 36 line 7, and on page 55, line 23, by striking "[2000]" and inserting "1997".

3. Amend C.S.S.B. 3 in SECTION 1, proposed Article 6675c, Sec. 1(3) (House committee report, page 2 line 13, strike "or" and substitute "and").

Floor Amendment No. 3

Amend C.S.S.B. 3 in SECTION 1 of the bill by adding a new Subsection (r) to proposed Section 6, Article 6675c, Revised Statutes, (page 14, after line 20, House committee report) to read as follows:

(r) In addition to a penalty proposed by an administrative law judge under Subsection (h), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and make it a part of a final order entered in the proceeding. The proceeds collected from a

finding made under this subsection shall be deposited in a special account in the general revenue fund which may be appropriated only to the attorney general.

Floor Amendment No. 4

Amend **C.S.S.B. 3** in SECTION 3 of the bill by striking proposed Section 6(b), Article 6675d, Revised Statutes (page 28, lines 4-6, House committee report), and substituting the following:

(b) A peace officer of any of the following municipalities is eligible to apply for certification under this section:

(1) a municipality with a population of 100,000 or more;

(2) a municipality with a population of 25,000 or more any part of which is located in a county with a population of 2.4 million or more; or

(3) a municipality any part of which is located in a county bordering the United Mexican States.

Floor Amendment No. 5

Amend **C.S.S.B. 3** by striking Section 28 of this bill and renumbering all following sections appropriately.

Floor Amendment No. 1 on Third Reading

Amend **C.S.S.B. 3** on third reading by adding a new appropriately numbered section to read as follows and renumbering the existing sections as appropriate:

SECTION ____ . Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Section 3C to read as follows:

Sec. 3C. (a) A person may not require indemnification from a motor carrier as a condition to:

(1) the transportation of property by the motor carrier for compensation or hire; or

(2) entrance onto property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire.

(b) Subsection (a)(2) of this section does not apply to a claim arising from damages or losses from the wrongful or negligent act or omission of the motor carrier.

The amendments were read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendments to **S.B. 3** by a viva voce vote.

SENATE BILL 102 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 102** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 102** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 606.064, Government Code, is amended to read as follows:

Sec. 606.064. EMPLOYEE CONTRIBUTIONS [BY STATE AGENCY].

(a) Each state employee, including a judge paid by the state, for whom an agreement for social security coverage is in effect under this subchapter shall pay contributions on wages in the amount of the employee tax. [The state shall pay all contributions on wages for social security coverage of a state employee except:

[(1) as provided by Section 606.065; or

[(2) the amount of the employee tax in excess of 5.85 percent of wages computed on a wage base of \$16,500 in a calendar year.]

(b) The obligation provided by this section is a condition of employment or of holding office. [The legislature may provide in the General Appropriations Act for a state contribution in excess of the amount provided in Subsection (a)(2):

[(c) A state employee is obligated to pay only the difference between the amount the legislature provides and the amount required by federal law.

[(d) The contribution made by the state shall be paid from the same fund from which an employee receives compensation:

[(e) The comptroller may prorate the state's expected contribution for an employee's employee tax over the portion of the calendar year that the employee's salary is subject to the Federal Insurance Contributions Act to equalize the employee's monthly contributions during the portion of the year that the employee's salary is subject to Federal Insurance Contributions Act taxes:]

SECTION 2. Section 606.067(a), Government Code, is amended to read as follows:

(a) For a state employee who is paid from the state treasury, the legislature shall appropriate, from the same fund from which the employee is paid, an amount equal to the [total of the] state's contributions under Section 606.063 [and Section 606.064 or 606.065].

SECTION 3. Chapter 659, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. BENEFIT REPLACEMENT PAY

Sec. 659.121. DEFINITIONS. In this subchapter:

(1) "Compensation" means, except as provided by Section 659.124, salary or wages subject to tax under the Federal Insurance Contributions Act.

(2) "Eligible state employee" means an individual who was on August 31, 1995:

(A) employed by a state agency and eligible for state payment of the employee tax under Section 606.064 as that section existed on that date;

(B) using unpaid leave from a position with a state agency, if the individual would have been eligible for state payment of the

employee tax under Section 606.064 as that section existed on that date had the individual not been using unpaid leave from the position; or

(C) not working for a state agency if:

(i) the individual was not working on that date solely because the individual's employment with the agency customarily does not include the summer months;

(ii) the individual had contracted with the agency not later than that date for the individual to resume working for the agency not later than September 2, 1995; and

(iii) the position held by the individual on September 2, 1995, would have made the individual eligible for state payment of the employee tax under Section 606.064 as that section existed on August 31, 1995, if the employee had held the position on that date.

(3) "Eligible state-paid judge" means an individual who on August 31, 1995:

(A) held office; and

(B) was eligible for state payment of the employee tax under Section 606.065 as that section existed on that date.

(4) "Employee tax" means the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act.

(5) "Retirement contribution" means a mandatory contribution by an eligible state employee or eligible state-paid judge to a retirement system.

(6) "Retirement system" means the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the optional retirement program governed by Chapter 830, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two.

(7) "State agency" has the meaning assigned by Section 606.061.

Sec. 659.122. INCLUSION OF BENEFIT REPLACEMENT PAY. The salary or wages paid after December 31, 1995, to an eligible state employee or an eligible state-paid judge includes benefit replacement pay in the amount provided by Section 659.123.

Sec. 659.123. AMOUNT OF BENEFIT REPLACEMENT PAY. (a) Except as provided by Section 659.124, the benefit replacement pay of an eligible state employee or an eligible state-paid judge for a pay period is equal to the sum of:

(1) 5.85 percent of the compensation earned by the employee or judge during the pay period, subject to the limit provided by Subsection (b); and

(2) an additional amount equal to the retirement contribution paid by the employee or judge because of the benefit replacement pay provided by this subsection.

(b) The amount paid to an eligible state employee or an eligible state-paid judge under Subsection (a)(1) may not exceed \$965.25 each calendar year.

Sec. 659.124. AMOUNT OF BENEFIT REPLACEMENT PAY FOR HIGHER EDUCATION EMPLOYEES. (a) For a state employee employed by an institution of higher education, the benefit replacement pay is an increase in compensation equal to the sum of:

(1) 5.85 percent of the employee's compensation as of October 31, 1995, subject to the limit provided by Subsection (b); and

(2) an additional amount equal to the retirement contribution paid by the employee because of the benefit replacement pay provided by this subsection.

(b) The amount paid to an eligible state employee of an institution of higher education under Subsection (a)(1) may not exceed \$965.25.

(c) In this section, "compensation" means annualized base salary or wages, including longevity and hazardous duty pay.

Sec. 659.125. PAYING BENEFIT REPLACEMENT PAY IN EQUAL INSTALLMENTS. (a) Unless prohibited by a state agency under Subsection (b), an eligible state employee or an eligible state-paid judge may choose for the benefit replacement pay that the employee or judge is eligible to receive in a calendar year to be paid in equal installments in that year. The employee or judge must exercise this option before the beginning of the year. This subsection applies only to an eligible state employee or an eligible state-paid judge whose benefit replacement pay under Section 659.123(a)(1) will be \$965.25 during that year if the employee or judge remains in the position at the same compensation during the year.

(b) A state agency may prohibit an eligible state employee or an eligible state-paid judge from exercising the option described by Subsection (a) if the agency pays the employee's or judge's compensation.

(c) An eligible state employee or an eligible state-paid judge who exercises the option described by Subsection (a) for a calendar year and who terminates employment or leaves office before the end of that year is ineligible to be paid the difference between the benefit replacement pay received by the employee or judge and the benefit replacement pay the employee or judge would have received had the employee or judge not exercised the option described by Subsection (a).

Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT REPLACEMENT PAY. (a) An eligible state employee who leaves state employment after August 31, 1995, for at least 12 consecutive months, on returning to state employment or on assuming a state office, is ineligible to receive benefit replacement pay.

(b) An eligible state-paid judge who leaves office after August 31, 1995, for at least 12 consecutive months, on return to state office or on accepting a state employment, is ineligible to receive benefit replacement pay.

Sec. 659.127. ADMINISTRATION. The comptroller may adopt rules and establish procedures and reporting requirements to administer this subchapter.

SECTION 4. Section 606.065, Government Code, is repealed.

SECTION 5. (a) The appropriations in the General Appropriations Act for the state's contribution to the employee tax assessed on compensation paid after December 31, 1995, and before September 3, 1997, are canceled and may not take effect. The appropriations for the state's matching contribution are not affected by this section.

(b) In this section:

(1) "Compensation" means salary or wages subject to tax under the Federal Insurance Contributions Act.

(2) "Employee tax" means the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act.

(c) This section expires September 3, 1997.

SECTION 6. (a) Notwithstanding Chapter 606, Government Code, as it exists before Sections 1, 2, and 4 of this Act take effect, the state is not obligated to pay any portion of the employee tax for an individual who is not an eligible state employee or an eligible state-paid judge.

(b) In this section:

(1) "Eligible state employee" means an individual who was on August 31, 1995:

(A) employed by a state agency; and

(B) eligible for state payment of the employee tax under Section 606.064, Government Code, as that section existed on that date.

(2) "Eligible state-paid judge" means an individual who on August 31, 1995:

(A) held office; and

(B) was eligible for state payment of the employee tax under Section 606.065, Government Code, as that section existed on that date.

(3) "Employee tax" means the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act.

(4) "State agency" has the meaning assigned by Section 606.061, Government Code.

(c) This section expires January 1, 1996.

SECTION 7. (a) This Act is contingent on the becoming law of an appropriation for the fiscal biennium ending August 31, 1997, made by the 74th Legislature, Regular Session, 1995, to pay benefit replacement pay to every individual entitled to receive it under Subchapter H, Chapter 659, Government Code, as added by this Act.

(b) A general increase in salaries for state employees and state-paid judges that does not include amounts appropriated specifically to compensate for the reductions in net pay resulting from Sections 1, 2, 4, and 5 of this Act does not satisfy the contingency of Subsection (a) of this section.

(c) Before January 1, 1996, the comptroller shall determine whether an appropriation described by Subsection (a) of this section has become law and publish a finding in that regard in the Texas Register. If an appropriation described by that subsection does not become law, as determined by the comptroller, this Act has no effect.

(d) This section expires January 1, 1996.

SECTION 8. (a) Sections 1, 2, and 4 of this Act take effect December 1, 1995, and apply only to compensation paid after December 31, 1995. Compensation paid before January 1, 1996, is subject to Subchapter C, Chapter 606, Government Code, as it exists on November 30, 1995, and that law is continued in effect for that purpose.

(b) Section 5 of this Act takes effect December 1, 1995.

(c) The remainder of this Act takes effect September 1, 1995.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendment to **S.B. 102** by a viva voce vote.

SENATE BILL 124 WITH HOUSE AMENDMENT

Senator Moncrief called **S.B. 124** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1 on Third Reading

Amend **S.B. 124** on third reading as follows:

Strike Sections 2 and 3 and substitute the following:

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that the Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **S.B. 124**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 126 WITH HOUSE AMENDMENT

Senator Moncrief called **S.B. 126** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1 on Third Reading

Amend **S.B. 126** on third reading as follows:

Strike Sections 9 and 10 and substitute the following:

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that the Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **S.B. 126**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 129 WITH HOUSE AMENDMENT

Senator Moncrief called **S.B. 129** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1 on Third Reading

Amend **S.B. 129** on third reading as follows:

Strike Sections 4 and 5 and substitute the following:

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that the Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **S.B. 129**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 133 WITH HOUSE AMENDMENT

Senator Luna called **S.B. 133** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 133** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to distribution of and fees charged by health care providers or health care facilities for certain medical or mental health records.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. MEDICAL OR MENTAL HEALTH RECORDS

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the

laws of this state to provide or render health care in the ordinary course of business or practice of a profession.

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

(1) Chapter 31, Human Resources Code;

(2) the state Medicaid program;

(3) Title II, the federal Social Security Act, as amended (42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.); or

(5) Title XVIII, the federal Social Security Act, as amended (42 U.S.C. Section 1395 et seq.).

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance under Subsection (a)(1), (2), (3), or (4) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section 611.0045 and Section 5.08(k), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and any other provision that authorizes the charging of a fee for providing medical or mental health records.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Luna moved to concur in the House amendment to **S.B. 133**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 182 WITH HOUSE AMENDMENT

Senator Rosson called **S.B. 182** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 182** as follows:

In SECTION 1, line 9, add the word "health" after the word "any" and before the word "insurance", then added the words "policy or contract" after the words "insurance" and before the words "in this state,".

The amendment was read.

On motion of Senator Rosson and by unanimous consent, the Senate concurred in the House amendment to **S.B. 182** by a viva voce vote.

SENATE BILL 212 WITH HOUSE AMENDMENTS

Senator Nelson called **S.B. 212** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 212** as follows:

On page 3, lines 7-10, strike subsection (14) and substitute the following:

(14) elementary age (ages 5-13) recreation programs operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs and that such standards are provided to the parents of each program participant. Such ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility.

Floor Amendment No. 2

Amend **S.B. 212** as follows:

- (1) In SECTION 1, Sec. 42.041 (b)(13), delete the word "or".
- (2) In SECTION 1, Sec. 42.041 (b)(14), delete the period after the word "facility" and substitute "; or".
- (3) In SECTION 1, add a new Sec. 42.041 (b)(15) to read as follows:
"(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three

months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless."

The amendments were read.

On motion of Senator Nelson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 212** by a viva voce vote.

SENATE BILL 283 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 283** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 283** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the authority of certain prosecuting attorneys to apply for a protective order.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 71.04, Family Code, is amended to read as follows:

(c) ~~The [county attorney or the criminal] district attorney is the prosecuting attorney responsible for filing applications under this chapter unless the [The] district attorney [may assume the responsibility by giving notice of that assumption to the county attorney.]~~ transfers the responsibility to the county attorney in which case the county attorney shall be responsible for filing the applications. The prosecuting attorney responsible for filing applications under this chapter shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney. The application is to be filed as provided by Article 5.06, Code of Criminal Procedure.

SECTION 2. Article 5.06, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) The prosecuting attorney having responsibility under Section 71.04(c), Family Code, for filing applications for protective orders under Chapter 71, Family Code, shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 283 by deleting Section 1 and inserting the following section:

SECTION 1. Section 71.04, Family Code, is amended to read as follows:

(c) The county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications under this chapter ~~unless the~~ ~~the~~ district attorney assumes ~~[may assume]~~ the responsibility by giving notice of that assumption to the county attorney. The prosecuting attorney responsible for filing applications under this chapter shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney. The application is to be filed as provided by Article 5.06, Code of Criminal Procedure.

The amendments were read.

On motion of Senator Brown and by unanimous consent, the Senate concurred in the House amendments to S.B. 283 by a viva voce vote.

SENATE BILL 291 WITH HOUSE AMENDMENT

Senator Moncrief called S.B. 291 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend S.B. 291 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to voluntary adoption registries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 162.402(2), (3), (7), and (9), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(2) "Adoptee" means a person 18 years of age or older who has been legally adopted in this state ~~[during the person's minority]~~ or ~~[who was born in this state and legally adopted during the person's minority under the laws of]~~ another state or country.

(3) "Adoption" means the act of creating the legal relationship of parent and child between a person and a child who is not the biological child of that person. The term does not include the act of establishing the legal relationship of parent and child between a man and a child through proof of paternity or voluntary legitimation proceedings ~~[or the adoption of an adult]~~.

(7) "Authorized agency" means a public ~~[social service]~~ agency authorized to care for or to place children for adoption or a private entity approved for that purpose by the department through a license,

certification, or other means ~~[any other person approved for that purpose by the department]~~. The term includes a licensed child-placing agency or a previously licensed child-placing ~~[unlicensed private adoption]~~ agency that has ceased operations ~~[as an adoption agency]~~ and has transferred its adoption records to the department or an agency authorized by the department to place children for adoption and a licensed child-placing ~~[or unlicensed adoption]~~ agency that has been acquired by, merged with, or otherwise succeeded by an agency authorized by the department to place children for adoption.

(9) "Biological siblings" means persons ~~[siblings]~~ who share a common birth parent.

SECTION 2. Section 162.405, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.405. DETERMINATION OF APPROPRIATE REGISTRY [CENTRAL INDEX]. (a) The administrator of the central registry shall ~~determine~~ [compile a central index through which adoptees and birth parents may identify] the appropriate registry ~~to~~ [through] which ~~an applicant is entitled to apply~~ [register].

(b) ~~[The clerk of the court in which an adoption is granted shall, on or before the 10th day of the first month after the month in which the adoption is granted, transmit to the administrator of the central registry a report of adoption with respect to each adoption granted. The report must include the following information:~~

~~[(1) the name of the adopted child after adoption as shown in the final adoption decree;~~

~~[(2) the birth date of the adopted child;~~

~~[(3) the docket number of the adoption suit;~~

~~[(4) the identity of the court granting the adoption;~~

~~[(5) the date of the final adoption decree;~~

~~[(6) the name and address of each parent, guardian, managing conservator, or other person whose consent to adoption was required or waived under Section 162.010 or whose parental rights were terminated in the adoption suit;~~

~~[(7) the identity of the authorized agency, if any, through which the adopted child was placed for adoption; and~~

~~[(8) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.~~

~~[(c) An authorized agency may file with the administrator of the central registry a report of adoption with respect to any person adopted during the person's minority before January 1, 1984. The report may include:~~

~~[(1) the name of the adopted child after adoption as shown in the final adoption decree;~~

~~[(2) the birth date of the adopted child;~~

~~[(3) the docket number of the adoption suit;~~

~~[(4) the identity of the court granting the adoption;~~

~~[(5) the date of the final adoption decree;~~

~~[(6) the identity of the agency, if any, through which the adopted child was placed; and~~

~~[(7) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee:~~

~~[(d)] On receiving an inquiry by an adoptee, birth parent, or sibling who has provided satisfactory proof of age and identity and paid all required inquiry fees, the administrator of the central registry shall review the information on file in the central index and consult with the administrators of other registries in the state to determine the identity of any appropriate registry through which the adoptee, birth parent, or sibling may register. [If the index reveals that the adoptee was not placed for adoption through an authorized agency, the administrator of the central registry shall issue the adoptee an official certificate stating that the adoptee is entitled to apply for registration through the central registry. If the index identifies an authorized agency through which the adoptee was placed for adoption, the administrator of the central registry shall determine the identity of the registry through which the adoptee may register. If the administrator of the central registry cannot determine from the index whether the adoptee was placed for adoption through an authorized agency, the administrator of the central registry shall determine the identity of the registry with which the adoptee may register.]~~

~~(c) [(e)] Each administrator shall, not later than the 30th day after the date of receiving an inquiry from the administrator of the central registry, respond in writing to the inquiry that the registrant was not placed for adoption by an agency served by that registry or that the registrant was placed for adoption by an agency served by that registry. If the registrant was placed for adoption by an agency served by the registry, the administrator shall file a report with the administrator of the central registry including:~~

~~(1) the name of the adopted child as shown in the final adoption decree;~~

~~(2) the birth date of the adopted child;~~

~~(3) the docket number of the adoption suit;~~

~~(4) the identity of the court that granted the adoption;~~

~~(5) the date of the final adoption decree;~~

~~(6) the identity of the agency, if any, through which the adopted child was placed; and~~

~~(7) the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee [the information described by Subsections (c)(1)-(6)].~~

~~(d) [(f)] After completing the investigation, the administrator of the central registry shall issue an official certificate stating:~~

~~(1) the identity of the registry through which the adoptee, birth parent, or biological sibling may apply for registration, if known; or~~

~~(2) if the administrator cannot make a conclusive determination, that the adoptee, birth parent, or biological sibling is entitled to apply for registration through the central registry [and is entitled to apply for registration through other registries created under this subchapter].~~

~~[(g) On receiving an inquiry by a birth parent who has provided satisfactory proof of identity and age and paid all required inquiry fees, the administrator of the central registry shall review the information on file in the central index and consult with the administrators of other registries in the state in order to determine the identity of the appropriate registry or registries through which the birth parent may register. Each administrator shall, not later than the 30th day after the date of receiving an inquiry from the administrator of the central registry, respond in writing to the inquiry. After completing the investigation, the administrator of the central registry shall provide the birth parent with a written statement either identifying the name, address, and telephone number of each registry through which registration would be appropriate or stating that after diligent inquiry the administrator cannot determine the specific registry or registries through which registration would be appropriate.]~~

SECTION 3. Sections 162.406(a)-(d), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) An adoptee who is 18 years of age or older may apply to a registry for information about the adoptee's birth parents and biological siblings.

(b) A birth parent who is 18 [21] years of age or older may apply to a registry for information about an adoptee who is a child by birth of the birth parent.

(c) An alleged father who is 18 years of age or older and who acknowledges paternity but is not, at the time of application, a birth father may register as a birth father but may not otherwise be recognized as a birth father for the purposes of this subchapter unless:

(1) the adoptee's birth mother in her application identifies him as the adoptee's biological father; and

(2) additional information concerning the adoptee obtained from other sources is not inconsistent with his claim of paternity.

(d) A biological sibling who is 18 [21] years of age or older may apply to a [the central] registry for information about the person's adopted biological siblings. ~~[The application must be independent of any application submitted by a biological sibling as an adoptee for information about the person's birth parents.]~~

SECTION 4. Section 162.407, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.407. REGISTRATION ~~[APPLICATIONS]~~. (a) The administrator shall require each registration applicant to sign a written~~;~~ ~~verified~~ application.

(b) An adoptee adopted or placed through an authorized agency may ~~[must]~~ register through the registry maintained by that agency or the registry to which the agency has delegated registry services or ~~[An adoptee adopted through an authorized agency may not register through any other registry unless the agency through which the adoptee was adopted or the successor of the agency does not maintain a registry; directly or by delegation to another agency, in which case the adoptee may register]~~ through the central registry maintained by the department.

(c) Birth parents and biological siblings shall ~~may~~ register through the registry of the authorized agency through which the adoptee was adopted or placed. If the proper registry is unknown or if the agency's registry refuses the application, the birth parent or biological sibling may register through the central registry ~~[one or more registries]~~.

(d) The administrator may not accept an application for registration unless the applicant:

- (1) provides proof of identity as provided by Section 162.408;
- (2) establishes the applicant's eligibility to register; and
- (3) pays all required registration fees.

(e) A registration remains in effect until the 99th anniversary of the date the registration is accepted unless a shorter period is specified by the applicant or the registration is withdrawn before that time.

(f) A registrant may withdraw the registrant's registration in writing without charge at any time.

(g) After a registration is withdrawn or expires, the registrant shall be treated as if the person has not previously registered.

(h) A completed registry application must be accepted or rejected before the 46th day after the date the application is received. If an application is rejected, the administrator shall provide the applicant with a written statement of the reason for the rejection. ~~[Biological siblings registering as biological siblings may register through the central registry only.]~~

~~[(c) An application must contain:~~

- ~~[(1) the name, address, and telephone number of the applicant;~~
- ~~[(2) all other names and aliases by which the applicant has been known;~~
- ~~[(3) the applicant's name, age, date of birth, and place of birth;~~
- ~~[(4) the original name of the adoptee, if known;~~
- ~~[(5) the adoptive name of the adoptee, if known;~~
- ~~[(6) a statement that the applicant is willing to allow the applicant's identity to be disclosed to those registrants eligible to learn the applicant's identity;~~
- ~~[(7) the name, address, and telephone number of the agency or other entity, organization, or person placing the adoptee for adoption, if known, or, if not known, a statement that the applicant does not know that information;~~
- ~~[(8) an authorization to the administrator and the administrator's delegates to inspect all vital statistics records, court records, and agency records, including confidential records, relating to the birth, adoption, marriage, and divorce of the applicant or to the birth and death of any child or sibling by birth or adoption of the applicant;~~
- ~~[(9) the specific address to which the applicant wishes notice of a successful match to be mailed;~~
- ~~[(10) a statement that the applicant either does or does not consent to disclosure of identifying information about the applicant after the applicant's death;~~

~~[(11) a statement that the registration is to be effective for 99 years or for a stated shorter period selected by the applicant; and~~

~~[(12) a statement that the adoptee applicant either does or does not desire to be informed that registry records indicate that the applicant has a biological sibling who has registered under this subchapter.~~

~~[(f) The application may contain the applicant's social security number if the applicant, after being advised of the right not to supply that number, voluntarily furnishes it.~~

~~[(g) The application of an adoptee must include the names and birth dates of all children younger than 21 years of age in the applicant's adoptive family.~~

~~[(h) The application of a birth mother must include the following information:~~

~~[(1) the original name and date of birth or approximate date of birth of each adoptee with respect to whom she is registering;~~

~~[(2) each name known or thought by the applicant to have been used by the adoptee's birth father;~~

~~[(3) the last known address of the adoptee's birth father; and~~

~~[(4) other available information through which the birth father may be identified.~~

~~[(i) The application of the birth father must include the following information:~~

~~[(1) the original name and date of birth or approximate date of birth of each adoptee with respect to whom he is registering;~~

~~[(2) each name, including the maiden name, known or thought by the applicant to have been used by the adoptee's birth mother;~~

~~[(3) the last known address of the adoptee's birth mother; and~~

~~[(4) other available information through which the birth mother may be identified.~~

~~[(j) The application of a biological sibling must include:~~

~~[(1) a statement explaining the applicant's basis for believing that the applicant has one or more biological siblings;~~

~~[(2) the names of all the applicant's siblings by birth and adoption and their dates and places of birth, if known;~~

~~[(3) the names of the applicant's legal parents;~~

~~[(4) the names of the applicant's birth parents, if known; and~~

~~[(5) any other information known to the applicant through which the existence and identity of the applicant's biological siblings can be confirmed.~~

~~[(k) An application may also contain additional information through which the applicant's identity and eligibility to register may be ascertained.~~

~~[(l) The administrator shall assist the applicant in filling out the application if the applicant is unable to complete the application without assistance, but the administrator may not furnish the applicant with any substantive information necessary to complete the application.]~~

SECTION 5. Section 162.409, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.409. APPLICATION [REGISTRATION]. (a) An application must contain:

(1) the name, address, and telephone number of the applicant;
(2) any other name or alias by which the applicant has been known;

(3) the age, date of birth, and place of birth of the applicant;
(4) the original name of the adoptee, if known;
(5) the adoptive name of the adoptee, if known;
(6) a statement that the applicant is willing to allow the applicant's identity to be disclosed to a registrant who is eligible to learn the applicant's identity;

(7) the name, address, and telephone number of the agency or other entity, organization, or person placing the adoptee for adoption, if known, or, if not known, a statement that the applicant does not know that information;

(8) an authorization to the administrator and the administrator's designees to inspect all vital statistics records, court records, and agency records, including confidential records, relating to the birth, adoption, marriage, and divorce of the applicant or to the birth and death of any child or sibling by birth or adoption of the applicant;

(9) the specific address to which the applicant wishes notice of a successful match to be mailed;

(10) a statement that the applicant either does or does not consent to disclosure of identifying information about the applicant after the applicant's death;

(11) a statement that the registration is to be effective for 99 years or for a stated shorter period selected by the applicant; and

(12) a statement that the adoptee applicant either does or does not desire to be informed that registry records indicate that the applicant has a biological sibling who has registered under this subchapter [The administrator may not accept an application for registration unless:

(1) the applicant provides proof of identity in accordance with Section 162.408;

(2) the applicant establishes the applicant's eligibility to register;

(3) the administrator has determined that the applicant is not required to register with another registry;

(4) the applicant pays all required registration fees; and

(5) the counseling required under Section 162.413 has been completed].

(b) The application may contain the applicant's social security number if the applicant, after being advised of the right not to supply the number, voluntarily furnishes it. [Unless withdrawn earlier, a registration remains in effect from the date of acceptance for 99 years or for a shorter period specified by the registrant in the application.]

(c) The application of a birth parent must include:

(1) the original name and date of birth or approximate date of birth of each adoptee with respect to whom the parent is registering;

(2) the names of all other birth children, including maiden names, aliases, dates and places of birth, and names of the birth parents;

(3) each name known or thought by the applicant to have been used by the adoptee's other birth parent;

(4) the last known address of the adoptee's other birth parent; and

(5) other available information through which the other birth parent may be identified [A registrant may withdraw the registrant's registration without charge at any time].

(d) The application of a biological sibling must include:

(1) a statement explaining the applicant's basis for believing that the applicant has one or more biological siblings;

(2) the names, including maiden and married names, and aliases of all the applicant's siblings by birth and adoption and their dates and places of birth, if known;

(3) the names of the applicant's legal parents;

(4) the names of the applicant's birth parents, if known; and

(5) any other information known to the applicant through which the existence and identity of the applicant's biological siblings can be confirmed [After withdrawal or expiration of the registration, the registrant shall be treated as if the registrant had never registered].

(e) An application may also contain additional information through which the applicant's identity and eligibility to register may be ascertained.

(f) The administrator shall assist the applicant in filling out the application if the applicant is unable to complete the application without assistance, but the administrator may not furnish the applicant with any substantive information necessary to complete the application.

SECTION 6. Sections 162.411(b)-(f), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(b) Each registry shall establish a schedule of fees for services provided by ~~[to users of]~~ the registry. The fees shall be reasonably related to the direct and indirect costs of establishing, operating, and maintaining the registry.

(c) ~~[The department shall collect from each registrant a registration fee of \$15.~~

~~[(d)]~~ A fee may not be charged for withdrawing a registration.

~~[(d) [(e)]]~~ The fees collected by the department shall be deposited in a special fund in the general revenue fund. Funds in the special fund may be appropriated only for the administration of the central registry. ~~[Sections 403.094 and 403.095, Government Code, do not apply to the special fund for the administration of the central registry.]~~

~~[(e) [(f)]]~~ The administrator may waive users' fees in whole or in part if the applicant provides satisfactory proof of financial inability to pay the fees.

SECTION 7. Section 162.413, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.413. COUNSELING. ~~[(a)]~~ The applicant must participate in counseling for not less than one hour with a social worker or mental health professional with expertise in postadoption counseling after ~~[before]~~ the

administrator has accepted ~~[may accept]~~ the ~~[applicant's]~~ application for registration and before the release of confidential information. ~~[The social worker or mental health professional must be employed or designated by the department or the agency operating the registry.~~

~~[(b) If the applicant is unwilling or unable to counsel with a social worker or mental health professional employed by the department or agency operating the registry, the applicant may arrange for counseling at the applicant's expense with any social worker or mental health professional mutually agreeable to the applicant and the registry administrator at a location reasonably accessible to the applicant.~~

~~[(c) Counseling fees charged by the department or agency operating a registry shall be stated in the schedule of fees required under Section 162.411.~~

~~[(d) The social worker or mental health professional with whom the applicant has counseled shall furnish the applicant and the administrator with a written certification that the required counseling has been completed.]~~

SECTION 8. Sections 162.414(a)-(d), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) The administrator shall process each registration in an attempt to match the adoptee and the adoptee's birth parents or the adoptee ~~[a biological sibling]~~ and the adoptee's ~~[sibling's]~~ biological siblings.

(b) The administrator shall determine that there is a match if the adult adoptee and ~~[;]~~ the birth mother or ~~[; and]~~ the birth father have ~~[each]~~ registered or if a ~~[any two]~~ biological sibling has ~~[siblings have]~~ registered. ~~[A match may not be made until the youngest living adoptive sibling of an adoptee who shares a common birth parent with the adoptee is 21 years of age or older.]~~

(c) To establish or corroborate a match, the administrator shall request confirmation of a possible match from the bureau of ~~[each]~~ vital statistics ~~[bureau that has possession of the adoptee's or biological siblings' original birth records]~~. If the department or agency operating the registry has in its own records sufficient information through which the match may be confirmed, the administrator may, but is not required to, request confirmation from the bureau of ~~[a]~~ vital statistics ~~[bureau]~~. The bureau of ~~[A]~~ vital statistics ~~[bureau]~~ may confirm or deny the match without breaching the duty of confidentiality to the adoptee, adoptive parents, birth parents, or biological siblings and without a court order.

(d) To establish ~~[or corroborate]~~ a match, the administrator may also request confirmation of a possible match from the agency, if any, that has possession of records concerning the adoption of an adoptee or from the court that granted the adoption, the hospital where the adoptee or any biological sibling was born, the physician who delivered the adoptee or biological sibling, or any other person who has knowledge of the relevant facts. The agency, court, hospital, physician, or person with knowledge may confirm or deny the match without breaching any duty of confidentiality to the adoptee, adoptive parents, birth parents, or biological siblings.

SECTION 9. Section 162.416, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 162.416. DISCLOSURE OF IDENTIFYING INFORMATION ~~[NOTIFICATION OF MATCH]~~. (a) When a match has been made and confirmed to the administrator's satisfaction, the administrator shall mail to each registrant, at the registrant's last known address, by fax or registered or certified mail, return receipt requested, delivery restricted to addressee only, a written notice:

(1) informing the registrant that a match has been made and confirmed;

(2) reminding the registrant that the registrant may withdraw the registration before disclosures are made, if desired~~[-and that identifying information about the registrant may be released after the 30th day after the date the notice was received in the event the registrant fails to withdraw the registration]; and~~

(3) notifying the registrant that before any identifying disclosures are made, the registrant must:

(A) sign a written [postmatch] consent to disclosure that allows the disclosure of identifying information about the other registrants to the registrant and allows the disclosure of identifying information about the registrant to other registrants [acknowledging that the registrant desires that disclosures be made];

(B) participate in counseling for not less than one hour with a social worker or mental health professional who has expertise in postadoption counseling; and

(C) provide the administrator with written certification that the counseling required under Subdivision (B) has been completed

~~[(4) advising the registrant that additional counseling services are available].~~

(b) Identifying information about a registrant shall be released without the registrant's having consented after the match to disclosure if:

~~[(1) the registrant fails to withdraw the registrant's registration before the 30th day after the date the notification of a match was received;~~

~~[(2) there is no proof that the notification of match was received by the registrant before the 45th day after the date the notification of match was mailed to the registrant and the administrator, after making an inquiry to the vital statistics bureau of this state and of the state of the registrant's last known address, has not before the 90th day after the date the notification of match was mailed obtained satisfactory proof of the registrant's death; or~~

~~[(3)] the registrant is dead, the registrant's registration was valid at the time of death, and the registrant had in writing specifically authorized the postdeath disclosure in the registrant's application or in a supplemental statement filed with the administrator.~~

(c) Identifying information about a deceased birth parent may not be released until each surviving child of the deceased birth parent is an adult or until each [unless the] child's surviving parent, guardian, managing conservator, or legal custodian consents in writing to the disclosure.

(d) The administrator shall prepare and release written disclosure statements identifying information about each of the [to] registrants [about each other] if the registrants complied with Subsection (a) [this section] and, before the 60th day after the date notification of match was mailed, the [remaining] registrant or registrants have not withdrawn their registrations.

(e) If the administrator establishes that a match cannot be made because of the death of an adoptee, birth parent, or biological sibling, the administrator shall promptly notify the affected registrant. The administrator shall disclose the reason why a match cannot be made and may disclose nonidentifying information concerning the circumstances of the person's death.

SECTION 10. Sections 162.421(a) and (b), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) ~~This subchapter [An administrator, employee, or agent of the department may not initiate contact with an adult adoptee, birth parent, or biological sibling, directly or indirectly, for the purpose of requesting or suggesting that the adoptee, birth parent, or biological sibling place the person's name in a registry. This subsection] does not prevent the department from making known to the public, by appropriate means, the existence of voluntary adoption registries.~~

(b) Information received by or in connection with the operation of a registry may not be stored in a data bank used for any purpose other than operation of the registry ~~[or be processed through data processing equipment accessible to any person not employed by the registry].~~

SECTION 11. Sections 108.005, 162.402(14), 162.404, 162.410, 162.415, 162.417, and 162.418, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are repealed.

SECTION 12. This Act takes effect September 1, 1995.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendment to S.B. 291 by a viva voce vote.

SENATE RULE 7.21 SUSPENDED (Printing Rule)

On motion of Senator Brown and by unanimous consent, Senate Rule 7.21 was suspended as it relates to the printing of the House amendments to S.B. 345.

SENATE BILL 345 WITH HOUSE AMENDMENTS

Senator Brown called S.B. 345 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **S.B. 345** as follows:

(1) In SECTION 1 of the bill, in Subsection (d)(2)(B), Section 111.301, Tax Code (Senate engrossment, page 3, line 4), strike "\$10,000,000" and substitute "\$5,000,000".

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **S.B. 345** (committee printing, page 12, line 5), by striking "\$5,000,000" and substituting "\$4,000,000".

Committee Amendment No. 2

Amend **S.B. 345** by striking Section 3 of the bill (Senate engrossment, page 7, line 11, through page 9, line 22) and renumbering subsequent sections accordingly.

Committee Amendment No. 3

Amend **S.B. 345** as follows:

In SECTION 1 of the bill, amend Subchapter F, Section 111.301, by striking the existing Subsection (b) and substituting the following in lieu thereof:

(b) No refund may be made under this section if the person makes a payment in lieu of taxes, or any other payment, including a gift, grant, donation, or provision of in-kind service, to a municipality or county with which the person has executed a tax abatement agreement, if the payment was made during the period of the agreement. This subsection does not apply to a payment that is a tax, fee, or charge for services provided by the municipality or county, or to payments pursuant to a contract with an industrial district under Chapter 42, Local Government Code, or to a payment that in any year of the agreement does not in the aggregate exceed \$5,000 in value.

Floor Amendment No. 5

Amend Committee Amendment No. 3 to **S.B. 345** as follows:

In the last sentence of subsection (b) as added by the amendment, insert "or Chapter 43" between "Chapter 42" and ",".

Floor Amendment No. 6

Amend **S.B. 345** by striking Sections 1-4 and 6 of the bill and renumbering subsequent sections accordingly.

Amendment No. 8

Amend **S.B. 345**, as follows: On page 11, between lines 5 & 6, insert the following: Section 7: Add Sec. 312.501 of the Tax Code, as follows:

SUBCHAPTER D. COUNTY DEVELOPMENT DISTRICTSARTICLE I. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This Act may be cited as the County Development District Act.

Sec. 1.02. LEGISLATIVE INTENT. The intent of the Legislature is to further the public purpose of developing and diversifying the economy of the state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists.

Sec. 1.03. LEGISLATIVE FINDINGS. The legislature finds that:

(1) small and medium-sized counties in Texas are in need of incentives for the development of public improvements to attract visitors and tourists to such counties, and that such counties are at a disadvantage in competing with counties in other states for the location and development of projects that attract visitors and tourists by virtue of the availability and prevalent use in other states of financial incentives;

(2) that the means and measures authorized by this Act are in the public interest and serve a public purpose of the state in promoting the economic welfare of the citizens of the state by providing incentives for the location and development in certain Texas counties of projects that attract visitors and tourists and that result in employment and economic activity; and

(3) the creation of development districts is essential to the accomplishment of Section 52-a, Article III, Texas Constitution, and to the accomplishment of the other public purposes stated in this Act and further serves the purpose of Section 59, Article XVI, and Section 52, Article III, Texas Constitution.

Sec. 1.04. DEFINITIONS. In this Act:

(1) "District" means a county development district created under this Act.

(2) "Board" means the board of directors of the district.

(3) "Director" means a member of the board.

(4) "Commissioners court" means the governing body of the county in which the district is located.

(5) "County" means the county in which the district is located.

(6) "Project" has the same meaning as that term is defined to mean in Section 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(7) "Cost" has the same meaning as that term is defined to mean in Section 2(4), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(8) "Bonds" means bonds, notes, and other obligations.

Sec. 1.05. COUNTIES AUTHORIZED TO CREATE DISTRICTS. The commissioners court in a county with a population of not more than 400,000 according to the most recent federal decennial census may, upon petition of the owners of land in a proposed county, commence the creation of a county development district. The creation of the district is subject to a confirmation election held as provided by Article 2 of this Act.

ARTICLE 2. CREATION OF DISTRICTS

Sec. 2.01. PETITION OF LANDOWNERS. To create a district, a petition requesting creation shall be filed with the county commissioners court of the county in which all of the land in the proposed district is located. The petition shall be accompanied by a sworn statement indicating consent to creation signed by the holders of fee simple title of all of the land within the proposed district.

Sec. 2.02. CONTENTS OF PETITION. The petition shall:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) include a name of the district which shall include the name of the county followed by the words Development District No. _____;

(3) include the names of five persons who are willing and qualified to serve as temporary directors of the proposed district;

(4) state the general nature of the work proposed to be done and the cost of the project as then estimated by the petitioners; and

(5) state the necessity and feasibility of the proposed district and whether the district will serve the public purpose of attracting visitors and tourists to the county.

Sec. 2.03. HEARING ON PETITION. Not later than the 60th day after the date a petition is received, the commissioners court shall fix a date, time, and place at which the petition shall be heard and shall issue notice of the date, time, place, and subject matter of the hearing. The notice shall inform all persons of their right to appear and present evidence and testify for or against the creation of the district.

Sec. 2.04. NOTICE OF HEARING. At least 30 days before the date set for the hearing, notice of the hearing shall be mailed to the developer who signed the petition and the landowner of all the land in the district and shall be published in a newspaper with general circulation in the county in which the proposed district is located.

Sec. 2.05. HEARING. At the hearing, the commissioners court shall examine the petition to ascertain its sufficiency, and any person interested may appear before the commission to offer testimony on the sufficiency of the petition and whether or not the district should be created.

Sec. 2.06. GRANTING OR REFUSING PETITION. (a) After the hearing, if it is found that the petition conforms to the requirements of Section 2.02 of this Act and that the creation of the district and the proposed project is feasible and necessary and would serve the public purpose of attracting visitors and tourists to the county, the commissioners court shall so find and enter an order creating the district.

(b) If the commissioners court finds that the petition does not conform to the requirements of Section 2.02 of this Act or that the creation of the district and the proposed project is not feasible and necessary and would not serve the purpose of attracting visitors and tourists to the county, the commissioners court shall so find by its order and deny the petition.

Sec. 2.07. TEMPORARY DIRECTORS; VACANCY IN OFFICE. If the commissioners court grants the petition, it shall appoint to serve as

temporary directors of the district five persons who are qualified under this Act to serve as directors. A vacancy in the office of temporary director shall be filled by appointment by the commissioners court.

Sec. 2.08. QUALIFICATION OF TEMPORARY DIRECTORS. Each temporary director shall execute a bond in accordance with the provisions of Section 3.09 of this Act and shall take an oath of office, and the board shall meet and organize.

Sec. 2.09. CONFIRMATION AND SALES AND USE TAX ELECTION. The temporary board of directors shall conduct an election within the boundaries of the district to confirm the creation of the district and authorize a sales and use tax in conformity with this Act.

Sec. 2.10. ELECTION ORDER. An order calling an election under Section 2.09 of this Act must state:

- (1) the nature of the election, including the proposition that is to appear on the ballot;
- (2) the date of the election;
- (3) the hours during which the polls will be open;
- (4) the location of the polling places; and
- (5) the proposed rate of the sales and use tax for the district.

Sec. 2.11. NOTICE. The temporary directors shall give notice of the confirmation and sales and use tax election by publishing a substantial copy of the election order in a newspaper with general circulation in the county in which the proposed district is located once a week for two consecutive weeks. The first publication must appear at least 14 days before the date set for the election.

Sec. 2.12. CONDUCT OF ELECTION. (a) The election shall be held in accordance with the provisions of the Election Code, to the extent not inconsistent with this Act.

(b) The ballot shall be printed to permit voting for or against the proposition: "The creation of _____ County Development District No. _____ and the adoption of a proposed local sales and use tax rate of _____ (the rate specified in the election order) to be used for the promotion and development of tourism."

Sec. 2.13. RESULTS OF ELECTION. (a) After the confirmation and sales and use tax election, the presiding judge shall make returns of the result to the temporary board of directors. The temporary board of directors shall canvass the returns and declare the results.

(b) If a majority of the votes cast in the election favor the creation of the district and the adoption of the sales and use tax, then the temporary board shall declare that the district is created and shall declare the amount of the local sales and use tax adopted and enter the result on its minutes. If a majority of the votes cast in the election are against the creation of the district and the adoption of the sales and use tax, the temporary board shall declare that the proposition to create the district was defeated and enter the result in its minutes.

(c) A certified copy of the minute order declaring that the district is created and the local sales and use tax adopted and including the rate of the sales and use tax, or declaring that the proposition to create the district

was defeated, shall be sent to the commissioners court, the comptroller, and any taxing entity by certified or registered mail. Such order also shall show the date of the election, the proposition on which the vote was held, the total number of votes cast for or against the proposition, and the number of votes by which the proposition was approved.

ARTICLE 3. DISTRICT ADMINISTRATION

Sec. 3.01. BOARD OF DIRECTORS. (a) A district is governed by a board of five directors appointed by the county commissioners of the county in which the district is located. The temporary directors appointed under Section 2.07 of this Act shall become permanent directors of the district provided that the creation of the district is confirmed at the confirmation election.

(b) Directors serve staggered four-year terms that expire September 1. Following confirmation of the district at the election, the temporary directors shall draw lots to determine:

(1) the two directors to serve terms that expire on September 1 of the second year following creation of the district; and

(2) the three directors to serve terms that expire on September 1 of the fourth year following creation of the district.

Sec. 3.02. QUALIFICATIONS FOR DIRECTORS. To be qualified to serve as a director, a person shall be at least 21 years old, a resident citizen of the state of Texas, and a qualified voter within the county in which the district is located.

Sec. 3.03. PERSONS DISQUALIFIED FROM SERVING. Section 50.026, Water Code, relating to disqualification of directors, shall apply to directors of districts created under this Act.

Sec. 3.04. VACANCIES ON THE BOARD. A vacancy in the office of director shall be filled by appointment of the commissioners court.

Sec. 3.05. REMOVAL OF DIRECTOR. The governing body of the commissioners court, after notice and hearing, may remove a director for misconduct or failure to carry out the director's duties on petition by a majority of the remaining directors.

Sec. 3.06. ORGANIZATION OF BOARD. After each appointment of directors by the commissioners court, and after the directors have qualified by taking the proper oath, they shall organize by electing a president, a vice president, a secretary, and any other officers as in the judgment of the board are considered necessary.

Sec. 3.07. QUORUM; OFFICERS' DUTIES; MANAGEMENT OF DISTRICT. Sections 54.107, 54.108, 54.111, and 54.118, Water Code, relating to quorum, officers' duties, and management of the district, shall govern the board of directors of a district created under this Act.

Sec. 3.08. MEETINGS AND NOTICE. (a) The board shall designate and establish a district office in the county.

(b) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of a district requires.

(c) Notice of the time, place, and purpose of any meeting of the board shall be given by posting at a place convenient to the public within the

district. A copy of the notice shall be furnished to the clerk or clerks of the county in which the district is located, who shall post them on a bulletin board in the county courthouse used for such purpose.

(d) Except as herein provided the provisions of the open meeting laws Chapter 551, Government Code, shall be applicable to meetings of the board of directors. Any interested person may attend any meeting of the board.

Sec. 3.09. DIRECTOR'S COMPENSATION; BOND AND OATH OF OFFICE. A director is not entitled to receive compensation for service on the board. Sections 375.067, 375.069, and 375.070, Local Government Code, apply to directors of a district created under this Act.

Sec. 3.10. GOVERNMENTAL AGENCY; SUITS. (a) A district, when created and confirmed, may, through its directors, sue and be sued in any and all courts of this state in the name of the district. Service of process in any suit may be had by serving any two directors.

(b) A district is a governmental agency, a body politic and corporate, and a political subdivision of the state. Section 375.004, Local Government Code, applies to a district created under this Act.

ARTICLE 4. POWERS AND DUTIES

Sec. 4.01. POWERS. (a) A district shall have all the power to acquire and dispose of projects and shall have all of the other powers, authority, rights, and duties which will permit accomplishment of the purposes for which the district was created.

(b) The district shall have the power to provide for general promotion and tourist advertising of the district and its vicinity and to conduct a marketing program to attract visitors, any of which may be conducted by the district pursuant to contracts for professional services with persons or organizations selected by district.

(c) The district shall have the powers of a municipal management district created under Chapter 375, Local Government Code, to the extent not inconsistent with this Act.

Sec. 4.02. COMPETITIVE BIDDING; CONTRACT AWARD. Sections 375.221 and 375.223, Local Government Code, apply to a district created under this Act. Notwithstanding any other provision of this Act to the contrary, any contract between the district and a governmental entity or nonprofit corporation created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) shall not be subject to the competitive bidding requirement of this Act.

Sec. 4.03. EMINENT DOMAIN. A district not located within the corporate limits of a municipality may exercise the power of eminent domain to acquire land or interests in land within the district deemed necessary by the board of directors of the district for the purpose of providing water and sewer services to an authorized project. The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code.

ARTICLE 5. GENERAL FISCAL PROVISIONS

Sec. 5.01. EXPENDITURES. A district's money may be disbursed only by check, draft, order, or other instrument which shall be signed by

at least three directors. The general manager, treasurer, or other employee of the district when authorized by resolution of the board may sign checks, drafts, orders, or other instruments on any district operation account and these need not be signed by anyone else.

Sec. 5.02. PURPOSES FOR BORROWING MONEY. The district may borrow money for any corporate purpose or combination of corporate purposes.

Sec. 5.03. REPAYMENT OF ORGANIZATIONAL EXPENSES. The district's directors are authorized to pay all costs and expenses necessarily incurred in the creation and organization of a district, the cost of investigation and making plans, the cost of the engineer's report, project designer fees, legal fees, and other incidental expenses and to reimburse any person for money advanced for these purposes. These payments may be made from money obtained from the issuance of notes or the sale of bonds first issued by the district or out of other revenues of the district.

ARTICLE 6. ISSUANCE OF BONDS

Sec. 6.01. ISSUANCE OF BONDS. The district may issue bonds for the purpose of defraying all or part of the cost of any project as provided in this Act. Sections 375.201 through 375.208, inclusive, Local Government Code, shall apply to a district created under this Act to the extent not inconsistent with this Act.

Sec. 6.02. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest and redemption price on bonds from taxes; by pledging all or any part of the designated revenues, license fees, or other compensation from a project or any part thereof, including revenues and receipts derived by the district from the lease or sale of the project, or by pledging all or any part of any grant, donation, revenues, or income received to to be received from any public or private source; or from a combination of such sources.

Sec. 6.03. USE OF BOND PROCEEDS. The district may use bond proceeds to pay interest on the bonds during and after the period of the acquisition or construction of a project, to pay administrative and operating expenses, to create a reserve fund for the payment of principal and interest on the bonds, and to pay all expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds.

ARTICLE 7. TAXES

Sec. 7.01. SALES AND USE TAX. (a) A district may levy a sales and use tax for the benefit of the district if authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose. The sales and use tax, if adopted, does not count toward the limitation imposed by Chapter 323, Tax Code (County Sales and Use Tax Act) on any sales and use tax that has been levied by the county.

(b) If a district adopts the tax, there is imposed a tax on the receipts from the sale at retail of taxable items within the district at a rate of up to one-half of one percent. For purposes of this section, the term "taxable items" includes all items subject to any sales and use tax that is imposed by the county in which the district is located if the county has imposed a sales and use tax. There is also imposed an excise tax on the use, storage,

or other consumption within the district of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the district. The rate of the excise tax is the same as the rate of the sales tax portion of the tax applied to the sales price of the taxable items and is included in the sales tax.

(c) Chapter 323, Tax Code (County Sales and Use Tax Act), to the extent not inconsistent with this Act, governs the imposition, computation, administration, and governance of the tax under this section, except that Subsections (b) and (e), Section 323.101, and Sections 323.209, 323.401 through 323.406, and 323.505, do not apply. Chapter 323, Tax Code (County Sales and Use Tax Act), does not apply to the use and allocation of revenues under this Act. In applying the procedures under Chapter 323, Tax Code (County Sales and Use Tax Act), the district's name shall be substituted for "the county" and "board of directors" is substituted for "commissioners court."

(d) The permissible rates for a local sales and use tax levied under this Act are one-fourth of one percent, three-eighths of one percent, and one-half of one percent.

(e) The board by order may decrease or abolish the local sales and use tax rate or may call an election to increase, decrease, or abolish the local sales and use tax rate.

(f) At the election, the ballots shall be prepared to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate of (name of district) to (percentage) to be used for the promotion and development of tourism" or, "The abolition of the district sales and use tax used for the promotion and development of tourism." The increase or decrease in the tax rate is effective if it is approved by a majority of the votes cast. In calling and holding the election, the board shall use the procedures for the confirmation and tax election set forth in Article 2 of this Act.

(g) Taxes collected under this section may be used only for the purposes for which the district was created, and the district may pledge the revenue derived from the taxes imposed under this Section to the payment of bonds issued by the district.

(h) A county development district may adopt a tax under this section only if as a result of adoption of the tax the combined rate of all local sales and use taxes imposed by political subdivisions having territory in the district will not exceed two percent. If, as a result of the levy of or increase in a sales and use tax by a municipality in which there is located a district with an existing sales and use tax, or as a result of the annexation by a municipality of the territory in a district with an existing sales and use tax, the overlapping local sales and use taxes in the area within the district will exceed two percent, then the district's sales and use tax rate shall automatically be reduced to a rate that when added to the combined rate of local sales and use taxes will equal two percent. If a district's tax rate is so reduced, the municipality shall make payments to the district equal to the amounts that would have been collected by the district had the municipality not levied or increased its sales and use tax

or annexed the area within the district, less amounts that the district collects following the city's levy of or increase in its sales and use tax or annexation of the area within the district. Such payment shall be made by the municipality to the district within 10 days of receipt of the money from the comptroller's office and shall continue only for so long as any bonds of the district are outstanding.

**ARTICLE 8. ADDING AND EXCLUDING TERRITORY;
CONSOLIDATING AND DISSOLVING DISTRICTS**

Sec. 8.01. ADDING AND EXCLUDING LAND FROM THE DISTRICT. (a) Before the board issues bonds, the board may, on its own motion or upon request of a landowner in the district, petition the county commissioners for the addition of land to or exclusion of land from the district.

(b) If the commissioners court unanimously determines from the evidence that the best interests of the persons and property in the district will be served by adding or excluding land, the commissioners court shall enter in its records the appropriate findings and order adding or excluding land.

Sec. 8.02. DISSOLUTION OF DISTRICT. (a) A district may be dissolved only as provided by this Section.

(b) The board of directors may petition the commissioners court to dissolve the district if a majority of the board finds at any time (1) before the authorization of bonds or the final lending of its credit, that the proposed undertaking is impracticable or cannot be successfully and beneficially accomplished, or (2) that all bonds of the district or other debts of the district have been paid and the purposes of the district have been accomplished.

(c) On receipt of a petition from the board for dissolution of the district, the county commissioners shall hold a hearing as provided in Article 2 of this Act.

(d) If the commissioners court unanimously determines from the evidence that the best interests of the county and the owners of property and interests in property within the district will be served by dissolving the district, the commissioners court shall enter in its records the appropriate findings and order dissolving the district. Otherwise the commissioners court shall enter its order providing that the district has not been dissolved. Upon dissolution of the district, funds and property of the district, if any, shall be transferred to the commissioners court.

Sec. 8.03. DISSOLUTION OF DISTRICT UPON AGREEMENT WITH MUNICIPALITY. A district may be dissolved by agreement between the governing body of a municipality and the board of directors of a district if all of the territory within the district is located within or annexed by the municipality. The agreement shall require the municipality to acquire all of the funds, property, and other assets of the district and assume all contracts, debts, bonds, and other obligations of the district, and the municipality shall be bound in the same manner and to the same extent that the district was bound with respect to such contracts, debts, bonds,

and other obligations. On dissolution of the district, the taxes levied by the district are abolished.

SECTION 2. Chapter 352, Tax Code, is amended by adding Section 352.107 to read as follows:

Sec. 352.107. HOTEL TAX AUTHORIZED FOR COUNTY DEVELOPMENT DISTRICTS. Notwithstanding any other provision of this chapter to the contrary, a commissioners court of a county with a population of less than 400,000 may impose a hotel occupancy tax not to exceed seven percent on a person who pays for the use or possession or for the right to the use or possession of a room in a hotel ordinarily used for sleeping that is located within the boundaries of the county development district created under Article 2372d-9, Revised Statutes, and that is not located within the corporate limits of a municipality, subject to the limitations set forth in Sections 352.002(b) and (c). Taxes collected by a county under this section shall be remitted to the county development district not later than the 10th day after the date the county receives such funds and may be used by the district for the purposes for which sales and use tax proceeds may be used by the district.

Amendment No. 1 on Third Reading

Amend **S.B. 345** on third reading by amending second reading Amendment No. 8 by Smithee by adding in SECTION 1 of the amendment a new Sec. 2.07 to read as follows and renumbering subsequent sections accordingly:

"Sec. 2.07. CONSENT OF MUNICIPALITY. No land within the corporate limits of a municipality or within the extraterritorial jurisdiction of a municipality shall be included in a district unless the municipality grants its written consent, by resolution or ordinance, to the inclusion of the land within the district. Petitioners for creation shall submit to the governing body of the municipality a petition for consent to creation of the district which shall have attached a copy of the petition for creation."

The amendments were read.

Senator Brown moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 345** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Montford, Rosson, Bivins, and Truan.

SENATE BILL 440 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 440** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend S.B. 440 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to procedures for applying for a writ of habeas corpus by persons convicted of a felony and procedures for the compensation and appointment of counsel to represent certain persons charged with a capital felony.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.071 to read as follows:

Art. 11.071. PROCEDURE IN DEATH PENALTY CASE

Sec. 1. APPLICATION TO DEATH PENALTY CASE.

Notwithstanding any other provision of this chapter, this article establishes the procedures for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death.

Sec. 2. REPRESENTATION BY COUNSEL. (a) An applicant shall be represented by competent counsel unless the applicant has elected to proceed pro se and the convicting trial court finds, after a hearing on the record, that the applicant's election is intelligent and voluntary.

(b) If a defendant is sentenced to death on or after September 1, 1995, the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus. If a defendant is sentenced to death, does not have an initial application for a writ of habeas corpus under Article 11.07 pending on September 1, 1995, and has not been denied relief by the court of criminal appeals in an initial habeas corpus proceeding under Article 11.07, the convicting court, as soon as practicable, shall determine whether the defendant is indigent and, if so, whether the defendant desires the appointment of counsel for the purpose of a writ of habeas corpus.

(c) Immediately after the convicting court makes the findings required under Subsections (a), (b), and (i), the clerk of the convicting court shall forward to the court of criminal appeals:

(1) a copy of the judgment;

(2) a list containing the name, address, and telephone number of each counsel of record for the applicant at trial and on direct appeal; and

(3) if the applicant elects to proceed pro se, any findings made by the convicting court on the voluntariness of the applicant's election.

(d) Unless an applicant elects to proceed pro se or is represented by retained counsel, the court of criminal appeals shall, under rules and standards adopted by the court, appoint competent counsel at the earliest practicable time after receipt of the documents under Subsection (c).

(e) The court of criminal appeals may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or on direct appeal, unless:

(1) the applicant and the attorney request the appointment on the record; or

(2) the court finds good cause to make the appointment.

(f) If counsel is the same person appointed as counsel on appeal under Article 26.052, the court of criminal appeals shall appoint a second counsel to assist in the preparation of the appeal and writ of habeas corpus.

(g) If the court of criminal appeals denies an applicant relief under this article, an attorney appointed under this section to represent the applicant shall, not later than the 15th day after the date the court of criminal appeals denies relief or, if the case is filed and set for submission, the 15th day after the date the court of criminal appeals issues a mandate on the initial application for a writ of habeas corpus under this article, move to be appointed as counsel in federal habeas review under 21 U.S.C. Section 848(q) or equivalent provision or, if necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision.

(h) The court of criminal appeals shall reasonably compensate an attorney appointed by the court under this section from state funds. The court shall appoint and reasonably compensate an attorney for representation in a subsequent or untimely application for a writ of habeas corpus, if the court determines that the requirements of Section 5 allowing consideration of the application have been satisfied.

(i) If an attorney is representing an inmate under a sentence of death for an initial application for a writ of habeas corpus under Article 11.07 pending on September 1, 1995, the attorney may request that the convicting court determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of the writ of habeas corpus.

Sec. 3. INVESTIGATION OF GROUNDS FOR APPLICATION. (a) On appointment, counsel shall investigate expeditiously, before and after the appellate record is filed in the court of criminal appeals, the factual and legal grounds for the filing of an application for a writ of habeas corpus.

(b) Not later than the 30th day before the date the application for a writ of habeas corpus is filed with the convicting court, counsel may file with the court of criminal appeals an ex parte, verified, and confidential request for prepayment of expenses, including expert fees, to investigate and present potential habeas corpus claims. The request for expenses must state:

(1) the claims of the application to be investigated;

(2) specific facts that suggest that a claim of possible merit may exist; and

(3) an itemized list of anticipated expenses for each claim.

(c) The court shall grant a request for expenses in whole or in part if the request for expenses is timely and reasonable. If the court denies

in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant.

(d) Counsel may incur expenses for habeas corpus investigation, including expenses for experts, without prior approval by the court of criminal appeals. On presentation of a claim for reimbursement, which may be presented ex parte, the court shall order reimbursement of counsel for expenses, if the expenses are reasonably necessary and reasonably incurred. If the court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant. The applicant may request reconsideration of the denial for reimbursement.

(e) Materials submitted to the court under this section are a part of the court's record.

Sec. 4. FILING OF APPLICATION. (a) An application for a writ of habeas corpus, returnable to the court of criminal appeals, must be filed in the convicting court not later than the 45th day after the date the appellee's original brief is filed on direct appeal with the court of criminal appeals. If an applicant who was convicted before September 1, 1995, does not have an original application for a writ of habeas corpus under Article 11.07 pending on September 1, 1995, and has not previously filed an application under Article 11.07, the applicant's original application must be filed not later than the 180th day after the date the court of criminal appeals appoints counsel under Section 2 or not later than the 45th day after the date the appellee's original brief is due on direct appeal, whichever is later.

(b) An application filed after the filing date that is applicable to the applicant under Subsection (a) is presumed untimely unless the applicant establishes good cause by showing particularized justifying circumstances.

(c) If counsel has been appointed and a timely application is not filed on or before the applicable filing date under Subsection (a), the convicting court shall, before the 11th day after the applicable filing date under Subsection (a), conduct a hearing and determine if good cause exists for either the untimely filing of an application or other necessary action.

(d) If the convicting court finds the applicant failed to establish good cause for the delay, the court shall:

(1) make appropriate findings of fact;

(2) enter an order to that effect;

(3) direct the clerk of the court to enter a notation that the petition is untimely; and

(4) send a copy of the petition, findings, and notation to the court of criminal appeals as provided by Section 5.

(e) If the convicting court finds that the applicant has established good cause for the delay, the convicting court shall proceed as if the application was timely filed.

(f) Notwithstanding Subsection (b), (c), or (e), an applicant cannot establish good cause for the untimely filing of an application filed after the 91st day after the applicable filing date under Subsection (a).

(g) A failure to file an application before the 91st day after the filing date applicable to the applicant under Subsection (a) constitutes a waiver of all grounds for relief that were available to the applicant before the last date on which an application could be timely filed, except as provided by Section 5.

(h) If an amended or supplemental application is not filed within the time specified under Subsection (a), the court shall treat the application as a subsequent or untimely application for a writ of habeas corpus under Section 5, unless the applicant:

(1) establishes good cause by showing particularized justifying circumstances for not raising in the original application the facts or claims contained in the amended or supplemental application; and

(2) the amended or supplemental application is filed before the 91st day after the filing date applicable to the applicant under Subsection (a).

Sec. 5. SUBSEQUENT OR UNTIMELY APPLICATION. (a) If an original application for a writ of habeas corpus is untimely or if a subsequent application is filed after filing an original application, a court may not consider the merits of or grant relief based on the subsequent or untimely original application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable;

(A) on the date the applicant filed the previous application; or

(B) if the applicant did not file an original application, on or before the last date for the timely filing of an original application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt; or

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071 or 37.0711.

(b) If the convicting court receives a subsequent application or an untimely original application, the clerk of the court shall:

(1) attach a notation that the application is a subsequent or untimely original application;

(2) assign to the case a file number that is ancillary to that of the conviction being challenged; and

(3) immediately send to the court of criminal appeals a copy of:

(A) the application;

(B) the notation;

(C) the order scheduling the applicant's execution, if scheduled; and

(D) any order the judge of the convicting court directs to be attached to the application.

(c) On receipt of the copies of the documents from the clerk, the court of criminal appeals shall determine whether the requirements of Subsection (a) have been satisfied. The convicting court may not take further action on the application before the court of criminal appeals issues an order finding that the requirements have been satisfied. If the court of criminal appeals determines that the requirements have not been satisfied, the court shall issue an order dismissing the application as an abuse of the writ under this section.

(d) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(e) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Sec. 6. ISSUANCE OF WRIT. (a) If a timely application for a writ of habeas corpus is filed in the convicting court, a writ of habeas corpus, returnable to the court of criminal appeals, shall issue by operation of law.

(b) If the convicting court receives notice that the requirements of Section 5 for consideration of a subsequent or untimely application have been met, a writ of habeas corpus, returnable to the court of criminal appeals, shall issue by operation of law.

(c) The clerk of the convicting court shall:

(1) make an appropriate notation that a writ of habeas corpus was issued;

(2) assign to the case a file number that is ancillary to that of the conviction being challenged; and

(3) send a copy of the application by certified mail, return receipt requested, to the attorney representing the state in that court.

(d) The clerk of the convicting court shall promptly deliver copies of documents submitted to the clerk under this article to the applicant and the attorney representing the state.

Sec. 7. ANSWER TO APPLICATION. (a) The state may file an answer to the application for a writ of habeas corpus not later than the 30th day after the date the state receives notice of issuance of the writ. The state shall serve the answer, if any, on counsel for the applicant or, if the applicant is proceeding pro se, on the applicant. The state may request from the convicting court an extension of time in which to answer the application by showing particularized justifying circumstances for the extension.

(b) Matters alleged in the application not admitted by the state are deemed denied.

Sec. 8. FINDINGS OF FACT WITHOUT EVIDENTIARY HEARING.

(a) Not later than the 20th day after the last date the state may answer the application, the convicting court shall determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist and shall issue a written order of the determination.

(b) If the convicting court determines the issues do not exist, the parties may file proposed findings of fact and conclusions of law for the court to consider on or before a date set by the court that is not later than the 30th day after the date the order is issued.

(c) After argument of counsel, if requested by the court, the convicting court shall make appropriate written findings of fact and conclusions of law not later than the 15th day after the date the parties filed proposed findings or not later than the 45th day after the date the court's determination is made under Subsection (a), whichever occurs first.

(d) The clerk of the court shall immediately send to:

(1) the court of criminal appeals a copy of the:

(A) application;

(B) answer;

(C) orders entered by the convicting court;

(D) proposed findings of fact and conclusions of law; and

(E) findings of fact and conclusions of law entered by the

court; and

(2) counsel for the applicant, or if the applicant is proceeding pro se, to the applicant, a copy of:

(A) orders entered by the convicting court;

(B) proposed findings of fact and conclusions of law; and

(C) findings of fact and conclusions of law entered by

the court.

(e) Failure of the convicting court to issue findings of fact and conclusions of law within the time provided by Subsection (c) constitutes a finding that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do not exist.

Sec. 9. HEARING. (a) If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, the court shall enter an order, not later than the 20th day after the last date the state may answer the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved. To resolve the issues, the court may require affidavits, depositions, interrogatories, and evidentiary hearings and may use personal recollection.

(b) The convicting court shall allow the applicant and the state not less than 10 days to prepare for an evidentiary hearing. The parties may waive the preparation time. If the state or the applicant requests that an evidentiary hearing be held within 30 days after the date the court ordered the hearing, the hearing shall be held within that period unless the court states, on the record, good cause for delay.

(c) The presiding judge of the convicting court shall conduct a hearing held under this section unless another judge presided over the original capital felony trial, in which event that judge, if qualified for assignment under Section 74.054 or 74.055, Government Code, may preside over the hearing.

(d) The court reporter shall prepare a transcript of the hearing not later than the 30th day after the date the hearing ends and file the transcript with the clerk of the convicting court.

(e) The parties may file proposed findings of fact and conclusions of law for the convicting court to consider on or before a date set by the court that is not later than the 30th day after the date the transcript is filed. If the court requests argument of counsel, after argument the court shall make written findings of fact that are necessary to resolve the previously unresolved facts and make conclusions of law not later than the 15th day after the date the parties file proposed findings or not later than the 45th day after the date the court reporter files the transcript, whichever occurs first.

(f) The clerk of the convicting court shall immediately transmit to:

(1) the court of criminal appeals a copy of:

(A) the application;

(B) the answers and motions filed;

(C) the court reporter's transcript;

(D) the documentary exhibits introduced into evidence;

(E) the proposed findings of fact and conclusions of law;

(F) the findings of fact and conclusions of law entered by

the court;

(G) the sealed materials such as a confidential request for investigative expenses; and

(H) any other matters used by the convicting court in resolving issues of fact; and

(2) counsel for the applicant, or if the applicant is proceeding pro se, to the applicant, a copy of:

(A) orders entered by the convicting court;

(B) proposed findings of fact and conclusions of law; and

(C) findings of fact and conclusions of law entered by the court.

(g) The clerk of the convicting court shall forward an exhibit that is not documentary to the court of criminal appeals on request of the court.

Sec. 10. RULES OF EVIDENCE. The Texas Rules of Criminal Evidence apply to a hearing held under this article.

Sec. 11. REVIEW BY COURT OF CRIMINAL APPEALS. The court of criminal appeals shall expeditiously review all applications for a writ of habeas corpus submitted under this article. The court may set the cause for oral argument and may request further briefing of the issues by the applicant or the state. After reviewing the record, the court shall enter its judgment remanding the applicant to custody or ordering the applicant's release, as the law and facts may justify.

SECTION 2. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.052 to read as follows:

Art. 26.052. APPOINTMENT OF COUNSEL IN DEATH PENALTY CASE; REIMBURSEMENT OF INVESTIGATIVE EXPENSES. (a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.

(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.

(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than four members, including:

- (1) the administrative judge of the judicial region;
- (2) at least one district judge;
- (3) a representative from the local bar association; and
- (4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.

(d) The committee shall adopt standards for the qualification of attorneys for appointment to death penalty cases. The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint counsel to represent an indigent defendant as soon as practicable after charges are filed, if the death penalty is sought in the case. The judge shall appoint lead trial counsel from the list of attorneys qualified for appointment. The judge shall appoint a second counsel to assist in the defense of the defendant, unless reasons against the appointment of two counsel are stated in the record.

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

- (1) the type of investigation to be conducted;
- (2) specific facts that suggest the investigation will result in admissible evidence; and
- (3) an itemized list of anticipated expenses for each investigation.

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order

reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

(i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.

(j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.

(k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:

(1) the defendant and the attorney request the appointment on the record; and

(2) the court finds good cause to make the appointment.

(l) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds.

SECTION 3. Article 43.14, Code of Criminal Procedure, is amended to read as follows:

Art. 43.14. EXECUTION OF CONVICT. Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time after ~~before~~ the hour of 6 p.m. ~~sunrise~~ on the day set for the execution ~~[not less than thirty days from the day the court sets the execution date, as the court may adjudge]~~, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, such execution procedure to be determined and supervised by the Director of the institutional division of the Texas Department of Criminal Justice.

SECTION 4. Chapter 43, Code of Criminal Procedure, is amended by adding Article 43.141 to read as follows:

Art. 43.141. SCHEDULING OF EXECUTION DATE; WITHDRAWAL; MODIFICATION. (a) If an initial application under Article 11.071 is timely filed, the convicting court may not set an execution date before:

(1) the court of criminal appeals denies relief; or

(2) if the case is filed and set for submission, the court of criminal appeals issues a mandate.

(b) If an original application is not timely filed under Article 11.071 or good cause is not shown for an untimely application under Article 11.071, the convicting court may set an execution date.

(c) The first execution date may not be earlier than the 91st day after the date the convicting court enters the order setting the execution date. A subsequent execution date may not be earlier than the 31st day after the date the convicting court enters the order setting the execution date.

(d) The convicting court may modify or withdraw the order of the court setting a date for execution in a death penalty case if the court determines that additional proceedings are necessary on a subsequent or untimely application for a writ of habeas corpus filed under Article 11.071.

(e) If the convicting court withdraws the order of the court setting the execution date, the court shall recall the warrant of execution. If the court modifies the order of the court setting the execution date, the court shall recall the previous warrant of execution, and the clerk of the court shall issue a new warrant.

SECTION 5. Article 11.07, Code of Criminal Procedure, is amended to read as follows:

Art. 11.07. ~~[RETURN TO CERTAIN COUNTY;]~~ PROCEDURE AFTER CONVICTION WITHOUT DEATH PENALTY

Sec. 1. This article establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a felony judgment imposing a penalty other than death.

Sec. 2. After indictment found in any felony case, other than a case in which the death penalty is imposed, and before conviction, the writ must be made returnable in the county where the offense has been committed.

Sec. 3 [2]. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) Whenever an application ~~[a petition]~~ for writ of habeas corpus is filed after final conviction in a felony case, other than a case in which the death penalty is imposed, the clerk shall transfer or assign it to the court in which the conviction being challenged was obtained. When the application ~~[petition]~~ is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and send a copy of the application ~~[petition]~~ by certified mail, return receipt requested, to the attorney representing the state in that court, who shall have 15 days in which it may answer the application ~~[petition]~~. Matters alleged in the application ~~[petition]~~ not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. Confinement means confinement for any offense or any collateral consequence resulting from the conviction that is the basis of the instant habeas corpus. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the application ~~[petition]~~, any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order

affidavits, depositions, interrogatories, and hearings, as well as using personal recollection. Also, the convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the application [petition], any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

Sec. 4. (a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

(b) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(c) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Sec. 5 [3]. The Court of Criminal Appeals may deny relief upon the findings and conclusions of the hearing judge without docketing the cause, or may direct that the cause be docketed and heard as though originally presented to said court or as an appeal. Upon reviewing the record the court shall enter its judgment remanding the applicant [petitioner] to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Sec. 6 [4]. Upon any hearing by a district judge by virtue of this Act, the attorney for applicant [~~petitioner~~], and the state, shall be given at least seven [~~three~~] full days' notice before such hearing is held.

Sec. 7 [5]. When the attorney for the state files an answer, motion, or other pleading relating to an application [~~a petition~~] for a writ of habeas corpus or the court issues an order relating to an application [~~a petition~~] for a writ of habeas corpus, the clerk of the court shall mail or deliver to the applicant [~~petitioner~~] a copy of the answer, motion, pleading, or order.

SECTION 6. The rulemaking authority granted to the court of criminal appeals under Section 22.108, Government Code, is withdrawn with respect to rules of appellate procedure relating to an application for a writ of habeas corpus, but only to the extent the rules conflict with a procedure under Article 11.071, Code of Criminal Procedure, as added by this Act, or Article 11.07, Code of Criminal Procedure, as amended by this Act.

SECTION 7. (a) The change in law made by Articles 43.14, 43.141, and 11.071, Code of Criminal Procedure, as amended or added by this Act, applies only to a person under a sentence of death.

(b) The change in law made by Article 26.052, Code of Criminal Procedure, as added by this Act, applies only to a defendant charged with an offense committed on or after the effective date of this Act or to a defendant for whom the court of criminal appeals or a federal court has entered an order granting a new trial or a new punishment hearing on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date. A defendant charged with an offense committed before the effective date of this Act or a defendant for whom an order granting a new trial or new punishment hearing is entered before the effective date of this Act is covered by the law in effect when the offense was committed or the order was entered, and the former law is continued in effect for that purpose.

(c) The change in law made by Article 11.07, Code of Criminal Procedure, as amended by this Act, applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act by a person convicted of a felony, other than an application filed by a person under a sentence of death. An application filed before the effective date of this Act by a person convicted of a felony, other than an application filed by a person under a sentence of death, is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 8. The Legislature strongly encourages district courts to make use of state of the art technology for the preparation of transcripts in capital felony cases in order to expedite the appeals process in those cases.

SECTION 9. This Act takes effect September 1, 1995, but only if the comptroller certifies on or before that date that at least \$5,000,000 is appropriated by the General Appropriations Act, Acts of the 74th Legislature, Regular Session, 1995, for the fiscal biennium ending August 31, 1997, to the court of criminal appeals for the purpose of

providing compensation and expenses to counsel representing persons under a sentence of death in habeas corpus proceedings.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 440 in Section 9 of the bill, on page 24, line 18, by striking "\$5,000,000" and substituting "\$2,000,000".

The amendments were read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to S.B. 440 by a viva voce vote.

SENATE BILL 338 WITH HOUSE AMENDMENT

Senator Zaffirini called S.B. 338 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend S.B. 338 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the termination of the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 161.001, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Chapter 264;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been adjudicated to be criminally responsible for the death or serious injury of another of his or her children; ~~[or]~~

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E); or

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than one year and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not visited or maintained contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment; and

(2) termination is in the best interest of the child.

SECTION 2. Section 161.206(a), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) If the court finds by clear and convincing evidence grounds for termination of the parent-child relationship, it shall render an order terminating the parent-child relationship.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to **S.B. 338** by a viva voce vote.

SENATE BILL 351 WITH HOUSE AMENDMENT

Senator Moncrief called **S.B. 351** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 351** as follows:

1. In SECTION 1, Section 693.002(a)(1), strike the language "believed to be clinically usable for transplants or other therapy or treatment".

2. In SECTION 1, Section 693.002(a)(3), strike the current language and substitute the following:

If an autopsy is required, and the medical examiner determines that the removal of the organ(s) will not interfere with the subsequent course of an investigation or autopsy, the organs shall be released in a timely manner for removal and transplantation. The autopsy will be performed in a timely manner following the removal of the organs.

3. In SECTION 1, Section 693.002(a)(5), add "Such reimbursements shall be deposited in the general fund of the county." after "not to exceed \$1,000."

4. In SECTION 1, Section 693.002(a)(6), strike "The report shall become part of the medical examiner's report."

The amendment was read.

Senator Moncrief moved to concur in the House amendment to **S.B. 351**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 428 WITH HOUSE AMENDMENT

Senator Galloway called **S.B. 428** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 428** as follows:

(1) Insert a new Section 2 to read as follows:

SECTION 2. Section 23.55, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) The sanctions provided by Subsection (a) do not apply to land owned by an organization that qualifies as a religious organization under Section 11.20(c) if the organization converts the land to a use for which the land is eligible for an exemption under Section 11.20 within five years.

(2) Strike existing Sections 2 and 3 and substitute the following:

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Section 1 of this Act takes effect January 1, 1996.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Galloway moved to concur in the House amendment to **S.B. 428**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 533 WITH HOUSE AMENDMENTS

Senator Leedom called **S.B. 533** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 533** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to a principal who uses a sales representative.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (2), Section 35.81, Business & Commerce Code, is amended to read as follows:

(2) "Principal" means a person who:

(A) ~~[does not have a permanent or fixed place of business in this state;~~

~~[(B)] manufactures, produces, imports, or distributes a product for sale [to customers who purchase the product for resale];~~

~~(B) [(C)] uses a sales representative to solicit orders for the product; and~~

~~(C) [(D)] compensates the sales representative in whole or in part by commission.~~

SECTION 2. Sections 35.82, 35.83, and 35.84, Business & Commerce Code, are reenacted to read as follows:

Sec. 35.82. CONTRACT. A contract between a principal and a sales representative under which the sales representative is to solicit wholesale orders within this state must be in writing and set forth the method by which the sales representative's commission is to be computed and paid. The principal shall provide the sales representative with a copy of the contract. A provision in the contract establishing venue for an action arising under the contract in a state other than this state is void.

Sec. 35.83. PAYMENT IN ABSENCE OF CONTRACT. If a compensation agreement between a sales representative and a principal that is not in writing is terminated, the principal shall pay all commissions due the sales representative within thirty working days after the date of the termination.

Sec. 35.84. DAMAGES. A principal who fails to comply with a provision of a contract under Section 35.82 relating to payment of a commission or fails to pay a commission as required by Section 35.83 is liable to the sales representative in a civil action for three times the damages sustained by the sales representative plus reasonable attorney's fees and costs.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 533 by striking SECTIONS 1 and 2 in their entirety and inserting in lieu thereof the following:

SECTION 1. Subdivisions (2) and (3), Section 35.81, Business & Commerce Code, are amended to read as follows:

(2) "Principal means a person who:

(A) ~~[does not have a permanent or fixed place of business in this state;~~

~~[(B)]~~ manufactures, produces, imports, or distributes a product for sale ~~[to customers who purchase the product for resale];~~

~~(B)~~ ~~[(C)]~~ uses a sales representative to solicit orders for the product; and

~~(C)~~ ~~[(D)]~~ compensates the sales representative in whole or in part by commission.

(3) "Sales representative" means an independent contractor [a person] who solicits on behalf of a principal orders for the purchase at wholesale of the principal's product.

SECTION 2. Sections 35.82, 35.83, and 35.84, Business and Commerce Code, are amended to read as follows:

Sec. 35.82. CONTRACT. A contract between a principal and a sales representative under which the sales representative is to solicit wholesale orders within this state must be in writing or in a computer-based medium

and set forth the method by which the sales representative's commission is to be computed and paid. The principal shall provide the sales representative with a copy of the contract. A provision in the contract establishing venue for an action arising under the contract establishing venue for an action arising under the contract in a state other than this state is void.

Sec. 35.83. PAYMENT IN ABSENCE OF CONTRACT. If a compensation agreement between a sales representative and a principal that does not comply with Section 35.82 ~~[is not in writing]~~ is terminated, the principal shall pay all commissions due the sales representative within thirty working days after the date of the termination.

Sec. 35.84. DAMAGES. A principal who fails to comply with a provision of a contract under Section 35.82 relating to payment of a commission or fails to pay a commission as required by Section 35.83 is liable to the sales representative in a civil action for three times the unpaid commission ~~[damages]~~ sustained by the sales representative plus reasonable attorney's fees and costs.

The amendments were read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendments to S.B. 533 by a viva voce vote.

SENATE BILL 572 WITH HOUSE AMENDMENTS

Senator Moncrief called S.B. 572 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend S.B. 572 by adding the following appropriately numbered sections to read as follows and renumbering subsequent sections accordingly:

SECTION ____ . Section 574.034(f), Health and Safety Code, is amended to read as follows:

(f) A judge may not issue an order for temporary mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION ____ . Section 574.035(g), Health and Safety Code, is amended to read as follows:

(g) A judge may not issue an order for extended mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Floor Amendment No. 2

Amend S.B. 572 on page 6, line 14, by adding and new Section 6 to read as follows and renumbering subsequent subsections.

SECTION 6. Section 574.0085(b), Health and Safety Code, is amended to read as follows:

(b) To be eligible for appointment as a master, a person must be a resident of this state and have been licensed to practice law in this state for at least four years, or be a retired county judge, statutory or constitutional, with at least ten years of service.

The amendments were read.

Senator Moncrief moved to concur in the House amendments to **S.B. 572**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 413 WITH HOUSE AMENDMENT

Senator Brown called **S.B. 413** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 413** by adding a new subsection (c) to read as follows:

(c) the Texas Department of Insurance shall adopt rules governing the method of calculating premium for worker' compensation insurance coverage for volunteer members who are covered pursuant to this section.

The amendment was read.

Senator Brown moved to concur in the House amendment to **S.B. 413**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 227, Commemorating the Rohm and Haas Lone Star Plant ground breaking ceremony.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

SENATE BILL 472 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 472** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 472** as follows: page 1, line 10 after "standards" insert ", except the standards for distant binocular acuity,"

The amendment was read.

Senator Bivins moved to concur in the House amendment to **S.B. 472**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 512 WITH HOUSE AMENDMENTS

Senator Harris called **S.B. 512** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 512** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to payment for a statement of facts in a suit affecting the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 109.003, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, 1995, is amended to read as follows:

Sec. 109.003. **PAYMENT FOR STATEMENT OF FACTS.** [(a)] If the party requesting a statement of facts in an appeal of a suit has filed an affidavit stating the party's inability to pay costs as provided by Rule 40, Texas Rules of Appellate Procedure, and the affidavit is approved by the trial court, the trial court may ~~shall~~ order the county in which the trial was held to pay the costs of preparing the statement of facts.

~~[(b) This section applies to a county with a population in excess of two million.]~~

SECTION 2. (a) This Act takes effect September 1, 1995, and applies only to payment for a statement of facts in a suit affecting the parent-child relationship in which an affidavit stating a party's inability to pay costs is filed on or after the effective date of this Act.

(b) Payment for a statement of facts in a suit affecting the parent-child relationship in which an affidavit stating a party's inability to pay costs is filed before the effective date of this Act is covered by the law in effect when the affidavit was filed, and the former law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 512 by adding a new subsection in Section 1 as follows:

RESTRICTIONS ON PAYMENTS. Nothing in this section shall be construed to permit an official court reporter to be paid more than once for the preparation of the statement of facts.

The amendments were read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendments to S.B. 512 by a viva voce vote.

SENATE BILL 904 WITH HOUSE AMENDMENTS

Senator Henderson called S.B. 904 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend S.B. 904 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to the eligibility of certain fire and police departments to participate in the Texas Municipal Retirement System.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 852.005, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) For the purposes of this subtitle, a fire or police department has the standing of a municipality if:

(1) the department:

(A) was created and is operating under an interlocal cooperation agreement that has existed at least 15 years and was executed by two or more municipalities located in a county with a population of at least two million;

(B) is supervised by an administrative agency appointed by the contracting municipalities; and

(C) provides common fire protection or law enforcement services to the contracting municipalities; and

(2) the governing body of each municipality that is a party to the agreement has voted by ordinance or resolution to accept responsibility, in a manner to be determined by the participating municipalities, for all payments required of and obligations incurred by the department under this subtitle in the event that the interlocal cooperation agreement is dissolved or expires, all ordinances adopted by the participating municipalities with regard to such participation are approved by the Board of Trustees.

(d) The governing board of the supervising administrative agency by order may take an action for a department described by Subsection (c)

that is required or authorized by this subtitle to be made by municipal ordinance.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend C.S.S.B. 904 in SECTION 1 of the bill as follows:

(1) At the end of added Section 852.005(c)(1)(C), Government Code (House committee report, page 1, line 17), strike "and".

(2) Strike added Section 852.005(c)(2), Government Code (House committee report, page 1, line 18 through page 2, line 2) and substitute the following:

(2) the governing body of each municipality that is a party to the agreement has voted by ordinance or resolution to accept responsibility, in a manner to be determined by the participating municipalities, for all payments required of an obligations incurred by the department under this subtitle in the event that the interlocal cooperation agreement is dissolved or expires; and

(3) all ordinances adopted by the participating municipalities with regard to the participation are approved by the board of trustees.

The amendments were read.

Senator Henderson moved to concur in the House amendments to S.B. 904.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Gallegos.

SENATE BILL 914 WITH HOUSE AMENDMENT

Senator Armbrister called S.B. 914 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend S.B. 914 by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to disciplinary procedures for commissioned peace officers and other employees of the Texas Alcoholic Beverage Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 5, Alcoholic Beverage Code, is amended by adding Section 5.104 to read as follows:

Sec. 5.104. EMPLOYEE DISCIPLINARY PROCEDURES. (a) The commission or the administrator may not take a disciplinary action against an officer or employee of the commission without just cause or without providing due process.

(b) An officer or employee who is subject to disciplinary action is entitled to an internal appeal of the action before the action becomes final. The commission shall adopt a rule establishing procedures for an internal appeal and shall provide a written description of the rule to the commission's employees.

(c) The commission shall place an officer or employee who is dismissed for cause on administrative leave without pay until the disposition of the internal appeal. If the allegations that formed the basis for the dismissal are rejected on appeal, the commission shall reinstate the officer or employee to the person's former status and the officer or employee is entitled to back pay in the amount equal to the pay withheld during the administrative leave imposed by the commission.

(d) In this section:

(1) "Disciplinary action" means a written reprimand, suspension without pay, demotion for cause, disciplinary probation, or dismissal.

(2) "Officer or employee" means a commissioned peace officer or an employee of the commission who is compensated at an amount less than the amount prescribed by the General Appropriations Act for step 1, salary group 21, of the position classification salary schedule.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendment to **S.B. 914** by a viva voce vote.

(Senator Truan in Chair)

SENATE BILL 1357 WITH HOUSE AMENDMENT

Senator Haywood called **S.B. 1357** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 1357** on page 1, lines 13 and 15 by striking the word "horizons" and "horizon" and substituting "commission designated reservoirs" and "commission designated reservoir", respectively.

The amendment was read.

On motion of Senator Haywood and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1357** by a viva voce vote.

SENATE BILL 1059 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 1059** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 1059** as follows:

On page 1, lines 2 and 3, delete the words "or volunteers".

On page 2, line 10 replace the word "medicine" with the word "care".

On page 2, line 12, delete the words "or volunteer".

On page 2, line 16, following the words "continuing education" add the words "or in-service training".

On page 2, line 21 replace the word "medicine" with the word "care".

On page 2, line 23, delete the words "or volunteer".

On page 3, line 2 following the words "continuing education" add the words "or in-service training".

The amendment was read.

Senator Harris moved to concur in the House amendment to **S.B. 1059**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 640 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 640** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 640** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the imposition, collection, and enforcement of taxes; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 111.010(c), Tax Code, is amended to read as follows:

(c) Venue for and jurisdiction of a suit arising under this section is exclusively conferred upon the district courts of Travis County.

SECTION 2. Section 111.060(c), Tax Code, is amended to read as follows:

(c) Subsection (b) of this section does not apply to the taxes imposed by Chapters 152 and 211 of this code or under an agreement made under Section 153.017 of this code.

SECTION 3. Section 111.101, Tax Code, is amended to read as follows:

Sec. 111.101. SETTLEMENT BEFORE REDETERMINATION. ~~[(a)]~~ After the comptroller examines a taxpayer's records and before a petition for redetermination of the tax is filed, the comptroller may settle a claim for a tax, penalty, or interest imposed by this title if the cost of collection of the amount due would exceed the amount of tax due and if the amount due is not more than \$300.

~~[(b) A settlement under this section is not effective unless it is approved by the assistant comptroller for legal services.]~~

SECTION 4. Section 111.201, Tax Code, is amended to read as follows:

Sec. 111.201. ASSESSMENT ~~[AND REFUND]~~ LIMITATION. ~~[(a)]~~ No tax imposed by this title may be assessed after four years from the date that the tax becomes due and payable.

~~[(b) No refund of any tax imposed by this title may be made by the comptroller after four years after the date that the tax was paid, except on tolling of the statute of limitations for refunds as provided in this title.]~~

SECTION 5. Sections 151.0047 and 151.0048, Tax Code, are amended to read as follows:

Sec. 151.0047. "REAL PROPERTY REPAIR AND REMODELING". (a) "Real property repair and remodeling" means the repair, restoration, remodeling, or modification of an improvement to real property other than:

(1) a structure or separate part of a structure used as a residence; ~~or~~

(2) an improvement immediately adjacent to a structure described by Subdivision (1) of this section and used in the residential occupancy of the structure or separate part of the structure by the person using the structure or part as a residence; or

(3) an improvement to a manufacturing or processing production unit in a petrochemical refinery or chemical plant that provides increased capacity in the production unit.

(b) In this section:

(1) "Increased capacity" means the capability to produce:

(A) additional products or services as measured by units per hour or units per year; or

(B) a new produce or service.

(2) "Production unit" means a group of manufacturing and processing machines and ancillary equipment that together are necessary to create or produce a physical or chemical change beginning with the first processing of the raw material and ending with the finished product.

Sec. 151.0048. REAL PROPERTY SERVICE. (a) Except as provided by Subsection (b), "real ["Real"] property service" means:

(1) landscaping;

(2) the care and maintenance of lawns, yards, or ornamental trees or other plants;

(3) the removal or collection of garbage, rubbish, or other solid waste other than:

(A) hazardous waste;

(B) industrial solid waste;

(C) waste material that results from an activity associated with the exploration, development, or production of oil, gas, geothermal resources, or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code;

(D) domestic sewage or an irrigation return flow, to the extent the sewage or return flow does not constitute garbage or rubbish; and

(E) industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code;

(4) building or grounds cleaning, janitorial, or custodial services;

(5) a structural pest control service covered by Section 2, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes); or

(6) the surveying of real property.

(b) "Real property service" does not include a service listed under Subsection (a) if the service is purchased by a contractor as part of the improvement of real property with a new structure to be used as a residence or other improvement immediately adjacent to the new structure and used in the residential occupancy of the structure.

(c) In this section, "contractor" means a person who makes an improvement on real estate and who, as a necessary or incidental part of the service, incorporates tangible personal property into the property improved.

SECTION 6. Section 151.154, Tax Code, is amended to read as follows:

Sec. 151.154. RESALE CERTIFICATE: LIABILITY OF PURCHASER. (a) If a purchaser who gives a resale certificate makes any use of the taxable item [~~tangible personal property~~] other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business, the purchaser shall be liable for payment of the sales tax on the [~~fair market rental~~] value of the taxable item for any period during which the taxable item [~~tangible personal property~~] is used other than for retention, demonstration, or display.

(b) The value of an item of tangible personal property is the [The] fair market rental value of the tangible personal property, which is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for his use. The value of a taxable service is the fair market value of the taxable service, which is the amount that a purchaser would pay on the open market to obtain the service for the use of the purchaser.

(c) If ~~an [the]~~ item ~~of tangible personal property~~ has no fair market rental value ~~or if a taxable service has no fair market value~~, the original purchase price shall be the measure of the tax.

(d) At any time, the person making the divergent use may cease paying tax on the fair market rental value ~~or fair market value~~ and ~~may~~ pay sales tax on the original purchase price without credit for taxes previously paid ~~[on the fair market rental value]~~.

(e) ~~[(b)]~~ A purchaser of ~~a taxable item [tangible personal property]~~ who gives a resale certificate is not liable for the tax imposed by this chapter if he donates the ~~item [property]~~ to an organization exempted under Section 151.309 or 151.310(a)(1) or (2) of this code; except that any use by the purchaser of the ~~taxable item [property]~~ other than retention, demonstration, or display shall be subject to taxes imposed by ~~[Subsection (a) of]~~ this section.

SECTION 7. Section 151.155, Tax Code, is amended to read as follows:

Sec. 151.155. EXEMPTION CERTIFICATE. (a) If a purchaser certifies in writing to a seller that a taxable item sold, leased, or rented to the purchaser will be used in a manner or for a purpose that qualifies the sale of the item for an exemption from the taxes imposed by this chapter, and if the purchaser then uses the item in some other manner or for some other purpose, the purchaser is liable for the payment of the sales tax on the ~~[fair market rental]~~ value of the taxable item for any period during which the item is used in the divergent manner or for the divergent purpose.

(b) The value of an item of tangible personal property is the fair market rental value of tangible personal property, which is the amount that a purchaser would pay on the open market to rent or lease the property for his use. The value of a taxable service is the fair market value of the taxable service, which is the amount that a purchaser would pay on the open market to obtain the service for the use of the purchaser.

(c) If ~~an [the]~~ item ~~of tangible personal property~~ has no fair market rental value ~~or if a taxable service has no fair market value~~, the original purchase price shall be the measure of tax.

(d) At any time, the person making the divergent use may cease paying tax on the fair market rental value ~~or fair market value~~ and ~~may~~ pay sales tax on the original purchase price without credit for taxes previously paid ~~[on the fair market rental value]~~.

(e) ~~[(b)]~~ A purchaser of ~~a taxable item [tangible personal property]~~ who gives an exemption certificate is not liable for the tax imposed by this chapter if he donates the ~~taxable item [property]~~ to an organization exempted under Section 151.309 or 151.310(a)(1) or (2) of this code; except that any use by the purchaser of the ~~taxable item [property]~~ other than retention, demonstration, or display shall be subject to taxes imposed by ~~[Subsection (a) of]~~ this section.

SECTION 8. Section 151.157(f), Tax Code, is amended to read as follows:

(f) The comptroller may suspend or revoke a license issued under this section for good cause. The comptroller may determine the length of suspension or revocation necessary for the enforcement of this chapter and the comptroller's rules. A proceeding to suspend or revoke a license under this subsection is a contested case under Chapter 2001, Government Code [~~the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~]. Judicial review is by trial de novo. The district courts of Travis County have exclusive original jurisdiction of a suit under this section.

SECTION 9. Section 151.3111(b), Tax Code, is amended to read as follows:

(b) Subsection (a) of this section does not apply to the performance of a service on:

- (1) tangible personal property that would be exempted solely because of the exempt status of the seller of the property;
- (2) tangible personal property that is exempted solely because of the application of Section 151.303, 151.304, or 151.306 of this code;
- (3) motor vehicles, trailers, or semitrailers as defined, taxed, or exempted by Chapter 152 of this code; ~~or~~
- (4) a taxable boat or motor as defined by Section 160.001; or
- (5) machinery and equipment with a purchase price greater than \$50,000 used exclusively in a commercial timber operation as described by Section 151.3161(a).

SECTION 10. Section 151.313(a), Tax Code, is amended to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter:

- (1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;
- (2) insulin;
- (3) a hypodermic syringe or needle;
- (4) a brace; hearing aid or audio loop; orthopedic, dental, or prosthetic device; ileostomy, colostomy, or ileal bladder appliance; or supplies or replacement parts for the listed items;
- (5) a therapeutic appliance, device, and any related supplies specifically designed for those products, if dispensed or prescribed by a licensed practitioner of the healing arts, when those items are purchased and used by an individual for whom the items listed in this subdivision were dispensed or prescribed;
- (6) corrective lens and necessary and related supplies, if dispensed or prescribed by an ophthalmologist or optometrist;
- (7) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment;
- (8) a braille wristwatch, braille writer, braille paper and braille electronic equipment that connects to computer equipment, and the necessary adaptive devices and adaptive computer software; ~~and~~

(9) each of the following items if purchased for use by the blind to enable them to function more independently: a slate and stylus, print enlarger, light probe, magnifier, white cane, talking clock, large print terminal, talking terminal, or harness for guide dog; and

(10) hospital beds.

SECTION 11. Section 151.314(e), Tax Code, is amended to read as follows:

(e) Food products, candy, carbonated beverages, and diluted juices are exempted from the taxes imposed by this chapter if sold at an exempt sale qualifying under this subsection or if stored or used by the purchaser of the item at the exempt sale. A sale is exempted under this subsection if:

(1) the sale is made by a person under 19 [~~18~~] years old who is a member of a nonprofit organization devoted to the exclusive purpose of education or religious or physical training or by a group associated with a public or private elementary or secondary school;

(2) the sale is made as a part of a fund-raising drive sponsored by the organization or group; and

(3) all net proceeds from the sale go to the organization or group for its exclusive use.

SECTION 12. Section 151.316, Tax Code, is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter:

(1) horses, mules, and work animals;

(2) animal life the products of which ordinarily constitute food for human consumption;

(3) feed for farm and ranch animals;

(4) feed for animals that are held for sale in the regular course of business;

(5) seeds and annual plants the products of which:

(A) ordinarily constitute food for human consumption;

(B) are to be sold in the regular course of business; or

(C) are used to produce feed for animals exempted by this section;

(6) fertilizers, fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or employed on a farm or ranch in the production of:

(A) food for human consumption;

(B) feed for animal life; or

(C) other agricultural products to be sold in the regular course of business;

(7) machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business;

(8) machinery and equipment exclusively used in, and pollution control equipment required as a result of, the processing, packing, or marketing of agricultural products by an [the] original producer at a location operated by the original producer [exclusively] for processing, packing, or marketing the producer's own products if:

(A) 50 percent or more of the products processed, packed, or marketed at or from the location are produced by the original producer and not purchased or acquired from others; and

(B) the producer does not process, pack, or market for consideration any agricultural products that belong to other persons in an amount greater than five percent of the total agricultural products processed, packed, or marketed by the producer; and

(9) ice exclusively used by commercial fishing boats in the storing of aquatic species including but not limited to shrimp, other crustaceans, finfish, mollusks, and other similar creatures.

(c) In this section:

(1) "Farm or ranch" includes one or more tracts of land used, in whole or in part, in the production of crops, livestock, or other agricultural products held for sale in the regular course of business. The term includes feedlots, dairy farms, poultry farms, commercial orchards, commercial nurseries, and similar commercial agricultural operations. The term does not include a home garden or a timber operation.

(2) "Original producer" means a person who:

(A) brings an agricultural product into being and is the owner of the agricultural product from the time it is brought into being until it is processed, packed, or marketed; or

(B) is the grower of an agricultural product, exercises predominant operational control over the raising of the agricultural product, and bears a risk of loss of investment in the agricultural product.

(d) Two or more corporations that operate agricultural activities on the same tract or adjacent tracts of land and that are entirely owned by an individual or a combination of the individual, the individual's spouse, and the individual's children may qualify as an original producer for the purposes of Subsection (a)(8).

SECTION 13. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3161 to read as follows:

Sec. 151.3161. TIMBER OPERATIONS. (a) The first \$50,000 of the purchase price of each unit of machinery or equipment used exclusively in a commercial timber operation to prepare the site, plant, cultivate, or harvest timber in the regular course of business is exempted from the taxes imposed by this chapter.

(b) Subsection (a) does not apply to the purchase of machinery or equipment through a rental or lease agreement with a term of less than 12 months.

(c) In this section, "machinery or equipment" means only complete systems or units that operate or perform a particular function independently of other units or components. The term does not include:

(1) repair or replacement parts, modules, accessories, or components; or

(2) handheld manual or power tools, including chain saws and axes.

SECTION 14. Section 151.317(c), Tax Code, is amended to read as follows:

(c) In this section:

(1) "Residential use" means use:

(A) in a family dwelling or in a multifamily apartment or housing complex or building or in a part of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, or building or part of the building occupied; or

(B) in a dwelling, apartment, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, house, or building or part of a building under a contract for an express initial term for longer than 29 consecutive days.

(2) "Commercial use" means use by a person engaged in selling, warehousing, or distributing a commodity or a professional or personal service, but does not include:

(A) use by a person engaged in:

(i) processing tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(ii) exploring for, ~~or~~ producing, ~~or~~ ~~and~~ transporting, a material extracted from the earth;

(iii) agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation; ~~or~~

(iv) electrical processes such as electroplating, electrolysis, and cathodic protection; or

(v) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or

(B) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale.

SECTION 15. Section 151.318, Tax Code, is amended by amending Subsections (b), (e), (m), and (n) and by adding Subsection (q) to read as follows:

(b) The exemption includes:

(1) chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable; and

(2) semiconductor fabrication cleanrooms and equipment.

(e) This section does not apply to any taxable item rented or leased for less than one year to a person engaged in manufacturing.

(m) The refund of a portion of the taxes imposed by this chapter provided by Subsection (h)(1) and Subsection (n) for property purchased during 1990 or 1991 and the reduction in the amount of the tax imposed by this chapter provided by Subsections (h)(2), (3), ~~and~~ (4), ~~and~~ (5) and

Subsection (n) for property purchased during 1992, 1993, or 1994 do not affect the application of [a] sales and use ~~taxes~~ [tax] imposed on the property by a political subdivision of this state under Chapter 321, 322, or 323, or under any other law.

(n) A person engaged in overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts is entitled to a refund or a reduction in the amount of tax imposed by this chapter for the purchase of machinery, equipment, [or] replacement parts or accessories with a useful life in excess of six months, or supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process that are used or consumed in the overhauling, retrofitting, or repairing. The amount of the refund or reduced amount of tax due is the same as provided by Subsection (h) for property covered by Subsection (g).

(q) For purposes of Subsection (b), "semiconductor fabrication cleanrooms and equipment" means all tangible personal property, without regard to whether the property is affixed to or incorporated into realty, used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually contained in the cleanroom environment. The term includes integrated systems, fixtures, and piping, all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances, and production equipment and machinery. The term does not include the building or a permanent, nonremovable component of the building, that houses the cleanroom environment. The term includes moveable cleanroom partitions and cleanroom lighting. "Semiconductor fabrication cleanrooms and equipment" are not "intraplant transportation equipment" or "used incidentally in a manufacturing, processing, or fabrication operation" as those terms are used in Subsection (c)(2).

SECTION 16. Section 151.319(e), Tax Code, is amended to read as follows:

(e) The following items are not exempted by Subsection (d) of this section:

(1) machinery or equipment or their accessories or replacement parts having a useful life when new in excess of six months;

(2) intraplant transportation equipment, maintenance or janitorial supplies or equipment, or other machinery, equipment, materials, or supplies that are used incidentally to printing or processing;

(3) hand tools; or

(4) office equipment or supplies; equipment or supplies used in sales, distribution, or transportation activities, or in gathering information; or other tangible personal property used by a newspaper printer in an activity other than the actual printing and processing operation[; ~~or~~

~~[(5) internal or external wrapping, packing, and packaging supplies, as defined by Section 151.302(d), purchased for a person's own~~

~~use, stored for use, or used in wrapping, packing, or packaging tangible personal property].~~

SECTION 17. Section 151.342, Tax Code, is amended to read as follows:

Sec. 151.342. AGRIBUSINESS ITEMS. (a) There are exempted from the tax imposed by this chapter bins used exclusively as containers in transporting fruit or vegetables from the field or place of harvest to a location where the items are processed, packaged, or marketed.

~~(b) There are exempted from the tax imposed by this chapter poultry cages used exclusively as containers in transporting poultry from a poultry farm to a location where the poultry is processed, packaged, or marketed.~~

SECTION 18. Section 151.350, Tax Code, is amended to read as follows:

Sec. 151.350. LABOR TO RESTORE ~~[REPAIR]~~ CERTAIN PROPERTY. (a) Labor to restore ~~[repair]~~ real or tangible personal property is exempted from the taxes imposed by this chapter if:

(1) the amount of the charge for labor is separately itemized; and

(2) the restoration is performed on ~~[repair is to]~~ property damaged within a disaster area by the condition that caused the area to be declared a disaster area.

(b) The exemption under this section does not apply to tangible personal property transferred by the service provider to the purchaser as part of the service ~~[repair]~~.

(c) In this section, "disaster area" means:

(1) an area declared a disaster area by the governor under Chapter 418, Government Code; or

(2) an area declared a disaster area by the president of the United States under 42 U.S.C. Section 5141.

(d) In this section, "restore" means:

(1) launder or clean, to the extent the service is a personal service as defined in Section 151.0045; and

(2) repair, restore, or remodel, to the extent the service is:

(A) a real property repair or remodeling service as defined in Section 151.0047; or

(B) defined as a taxable service in Section 151.0101(5).

SECTION 19. Section 151.509, Tax Code, is amended to read as follows:

Sec. 151.509. PETITION FOR REDETERMINATION. ~~[(b)]~~ A person petitioning for a redetermination of a determination made under Section 111.022 ~~[151.506 of this code]~~ must file, before the determination becomes final, security as the comptroller requires to ensure compliance with this chapter. The security may be sold by the comptroller in the manner provided by Subchapter A, Chapter 111 ~~[Section 151.611 of this code]~~.

SECTION 20. Section 151.712(g), Tax Code, is amended to read as follows:

(g) A proceeding to impose a civil penalty or suspend or revoke a license because of a violation of this section is a contested case under

Chapter 2001, Government Code [the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]. Judicial review is by trial de novo. The district courts of Travis County have exclusive original jurisdiction of a suit under this section.

SECTION 21. Sections 153.002(b) and (d), Tax Code, are amended to read as follows:

(b) A lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns to carriers or other lessees for interstate operation may be deemed to be the user or interstate trucker when he supplies or pays for the motor fuel consumed in those vehicles, and the lessor may be issued a permit as an interstate trucker when an application has ~~and bond have~~ been properly filed with and approved by the comptroller.

(d) A lessor described in Subsection (b) of this section may ~~must~~ file with his application for an interstate trucker permit one copy of the form-lease or service contract he enters into with the various lessees of his motor vehicles. When the interstate trucker permit has been secured, the lessor may ~~shall~~ make and assign to each motor vehicle he leases for interstate operation a photocopy of the permit to be carried in the cab compartment of the motor vehicle. The photocopy of the permit must have typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. The lessor is responsible for the proper use of the photocopy of the permit issued and for its return to him with the motor vehicle to which it is assigned.

SECTION 22. Section 153.017, Tax Code, is amended by amending Subsections (b) and (f) and by adding Subsections (g) and (h) to read as follows:

(b) An agreement may provide for:

- (1) determining the base state for motor fuel users;
- (2) ~~;~~ user records requirements;
- (3) ~~;~~ audit procedures;
- (4) ~~;~~ exchange of information;
- (5) ~~;~~ persons eligible for tax licensing;
- (6) licensing and license revocation procedures, permits, penalties,

and fees;

- (7) ~~;~~ defining qualified motor vehicles;
- (8) ~~;~~ determining ~~if~~ bonding procedures, types, and amounts;
- (9) ~~is required;~~ specifying reporting requirements and periods;
- (10) defining refund procedures and limitations, including the payment of interest;

(11) ~~including~~ defining uniform penalties, fees, [penalty] and interest rates;

(12) ~~for late reporting;~~ determining methods for collecting and forwarding of motor fuel taxes, ~~and~~ penalties, and interest due to another jurisdiction;

(13) the temporary remittal of funds equal to the amount of the taxes, penalties, and interest due to another jurisdiction but not otherwise collected, subject to appropriation of funds for that purpose; and

(14) ~~[, and]~~ other provisions to facilitate the administration of the agreement.

(f) An agreement entered into under this section prevails over an inconsistent rule of the comptroller. Except as otherwise provided by this section, a [A] statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

(g) The comptroller may segregate in a separate fund or account the amount of motor fuel taxes estimated to be due to other jurisdictions or otherwise subject to refund during the fiscal year, penalties and interest on those taxes due other jurisdictions, licensing fees, and other costs collected under the agreement. On a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. An auditing cost, membership fee, and other cost associated with the agreement may be paid from interest earned on funds segregated under this subsection. Any interest earnings in excess of the costs associated with the agreement shall be credited to general revenue.

(h) The legislature finds that it is in the public interest to enter into motor fuel tax agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected. The comptroller shall ensure that reasonable measures are developed to recover motor fuel taxes and other amounts due this state during each biennium.

SECTION 23. Section 153.116(e), Tax Code, is amended to read as follows:

(e) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in Texas that is a member of the FDIC ~~[or the FSLIC]~~ in an amount at least equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in Texas that is a member of the FDIC ~~[or FSLIC]~~ in an amount of credit at least equal to the bond amount required.

SECTION 24. Section 153.205, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) A permitted supplier may not make a tax-free sale to a purchaser using a signed statement:

(1) for the sale of more than 3,000 gallons of diesel fuel in a single transaction; or

(2) in a calendar month in which the supplier has previously sold more than 10,000 gallons of diesel fuel to the purchaser.

SECTION 25. Section 153.206(f), Tax Code, is amended to read as follows:

(f) If diesel fuel is purchased, in a single delivery of 5,000 gallons or more, or in lesser quantities where required by city ordinance, by any person for the purpose of resale, the seller, distributor, or broker shall sell the product to the retailer or any other person purchasing the product on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit and the tax shall be computed and paid over to the state on the temperature-corrected basis. All other sales shall be reported to the comptroller on the basis of gross or volumetric gallons of taxable diesel fuel ~~gasoline~~ sold.

SECTION 26. Section 153.218(e), Tax Code, is amended to read as follows:

(e) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in the state that is a member of the FDIC ~~or the FSLIC~~ in an amount at least equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in Texas that is a member of the FDIC ~~or FSLIC~~ in an amount of credit at least equal to the bond amount required.

SECTION 27. Section 153.220(a), Tax Code, is amended to read as follows:

(a) A delivery of diesel fuel into the fuel supply tanks of a motor vehicle operated for commercial purposes and described by Section 153.001(12) ~~having an aggregate capacity of 60 or more gallons~~ shall be evidenced by an invoice issued in duplicate by a dealer or an invoice or a distribution log issued by a bonded user or other user.

SECTION 28. Section 153.304, Tax Code, is amended to read as follows:

Sec. 153.304. DEALER'S PERMIT. A dealer's permit authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate, the motor vehicle of an interstate trucker licensed under an agreement entered into under Section 153.017, or a motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal.

SECTION 29. Section 153.305, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) An interstate trucker is not required to prepay the tax under Subsection (a) for a motor vehicle operated for commercial purposes and described by Section 153.001(12).

SECTION 30. Section 153.306, Tax Code, is amended to read as follows:

Sec. 153.306. INTERSTATE TRUCKER'S PERMIT. An interstate trucker's permit authorizes a person who imports ~~an interstate trucker operating a motor vehicle with a base license plate issued by a state other~~

~~than Texas to import~~] liquefied gas into this state in the fuel supply tanks of a motor vehicle ~~[vehicles]~~ owned or operated ~~[by him]~~ for commercial purposes and described by Section 153.001(12), to report and pay the tax due, and to make sales or distributions in Texas from the vehicle's [his] cargo tanks, but no delivery may be made in Texas into the fuel supply tanks of motor vehicles not bearing a current liquefied gas tax decal without first obtaining the required dealer's permit to make taxable sales. ~~[The interstate trucker's permit for users operating a motor vehicle with a base license plate issued by a state other than Texas is in lieu of the liquefied gas tax decal permit required to operate motor vehicles on the highways of the state.]~~

SECTION 31. Section 153.402, Tax Code, is amended to read as follows:

Sec. 153.402. PROHIBITED ACTS; CIVIL PENALTIES. A person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's or a trip permit when the person is required to hold one of those permits;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal;

(4) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(5) makes a taxable sale or delivery of liquefied gas without holding a valid dealer's permit;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(7) makes a ~~[tax-free or taxable sale or]~~ delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(8) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(9) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(10) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(11) furnishes a signed statement to a supplier for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(12) fails or refuses to comply with or violates a provision of this chapter; or

(13) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter.

SECTION 32. Section 153.403, Tax Code, is amended to read as follows:

Sec. 153.403. CRIMINAL OFFENSES. Except as provided by Section 153.404 of this code, a person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2) is required to hold a valid trip permit or interstate trucker's permit, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's permit;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal;

(4) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(5) sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;

(6) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(7) as a diesel tax prepaid user fails to prepay the tax on every diesel-powered motor vehicle owned or operated by him;

(8) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(9) makes a sale or delivery of liquefied gas on which the person knows the tax is required to be collected, if at the time the sale is made the person does not hold a valid dealer's permit;

(10) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(11) makes a ~~[tax-free or taxable sale or]~~ delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(12) refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, jobber, common or contract carrier, or any person required to hold a permit under this chapter;

(13) refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(14) refuses to permit the comptroller or the attorney general to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(15) is a distributor, bonded user, interstate trucker, or supplier and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(16) conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter or refuses to make sales of motor fuel on the volume-corrected basis prescribed by this chapter;

(17) refuses, while transporting motor fuel, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(18) refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(19) transports motor fuel for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(20) mutilates, destroys, or secretes a book or record required by this chapter to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, jobber, or person required to hold a permit under this chapter;

(21) is a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, jobber, or other person required to hold a permit under this chapter, or the agent or employee of one of those persons and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person;

(22) transports in any manner motor fuel under a false cargo manifest;

(23) engages in a motor fuel transaction that requires that the person have a permit under this chapter without then and there holding the required permit;

(24) makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(25) forges, falsifies, or alters an invoice prescribed by law;

(26) makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(27) furnishes to a supplier a signed statement for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(28) holds an aviation fuel dealer's permit and makes a taxable sale or use of any gasoline or diesel fuel;

(29) fails to remit any tax funds collected by a distributor, supplier, user, dealer, interstate trucker, jobber, or any other person required to hold a permit under this chapter;

(30) makes a sale of diesel fuel tax free into a storage facility of a person who:

(A) is not permitted as a supplier, as an aviation fuel dealer, as a bonded user, or as a diesel tax prepaid user of diesel fuel; or

(B) does not furnish to the permitted supplier a signed statement prescribed in Section 153.205 of this code;

(31) makes a sale of gasoline tax free to any person who is not permitted as either a distributor or an aviation fuel dealer;

(32) is a dealer who purchases any motor fuel tax free when not authorized to make a tax-free purchase under this chapter; or

(33) is a dealer who purchases motor fuel with the intent to evade any tax imposed by this chapter.

SECTION 33. Section 154.042(d), Tax Code, is amended to read as follows:

(d) A plan for achieving compliance that is submitted to the treasurer under Subsection (c) is confidential and not subject to the open records law, Chapter 552, Government Code [~~424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)~~].

SECTION 34. Section 154.051(m), Tax Code, is amended to read as follows:

(m) Information provided under Subsection (f) is confidential and not subject to the open records law, Chapter 552, Government Code [~~424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)~~].

SECTION 35. Section 154.101(g), Tax Code, is amended to read as follows:

(g) All financial information provided under this section is confidential and not subject to the open records law, Chapter 552, Government Code [~~424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)~~].

SECTION 36. Section 154.114, Tax Code, is amended to read as follows:

Sec. 154.114. FINAL SUSPENSION OR REVOCATION OF A PERMIT. (a) The treasurer may suspend or revoke a person's [~~distributor's, wholesaler's, bonded agent's, or retailer's~~] permit if the treasurer finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or an administrative rule made under this chapter.

(b) If the treasurer intends to suspend or revoke a permit, the treasurer shall provide the permit holder with written notice that includes a statement:

(1) of the reason for the intended revocation or suspension;

(2) that the permit holder is entitled to a hearing by the treasurer on the proposed suspension or revocation of the permit; and

(3) of the date, time, and place of the hearing.

(c) The treasurer shall mail the written notice by certified mail, return receipt requested, to the permit holder's mailing address as it appears on the treasurer's records [place designated on the application for a permit as the place of business]. Service by mail is complete when the notice is received, as evidenced by return receipt from the U. S. Postal Service.

(d) The treasurer shall give the permit holder not less than 10 days' notice of a final [may not schedule the] hearing [before the 10th working day after the date the permit holder received the notice].

(e) A permit holder may appeal the decision of the treasurer to a district court in Travis County not later than the 30th day after the date the treasurer's decision becomes final.

(f) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(g) If the treasurer suspends or revokes a permit, the treasurer shall provide written notice of the suspension or revocation, within a reasonable time, to each permit holder in the state. A permit holder violates Section 154.1015(a) by selling or distributing cigarettes to a person whose permit has been suspended or revoked only after the permit holder receives written notice of the suspension or revocation from the treasurer.

SECTION 37. Subchapter D, Chapter 154, Tax Code, is amended by adding Section 154.1141 to read as follows:

Sec. 154.1141. SUMMARY SUSPENSION OF A PERMIT. (a) The treasurer may suspend a person's permit without notice or a hearing for the person's failure to comply with this chapter or a rule adopted under this chapter if the person's continued operation constitutes an immediate and substantial threat to the collection of taxes imposed by this chapter and attributable to the person's operation.

(b) If the treasurer summarily suspends a person's permit, proceedings for a preliminary hearing before the treasurer or the treasurer's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than 10 days after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a person's permit, the treasurer shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the treasurer or the treasurer's representative and of the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer, employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the treasurer's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If the notice is

served in person, the permit holder shall immediately surrender the permit to the treasurer or the treasurer's representative. If notice is served by mail, the permit holder shall immediately return the permit to the treasurer.

(f) Section 154.114, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing under this section.

SECTION 38. Section 154.1145, Tax Code, is amended to read as follows:

Sec. 154.1145. HEARINGS. Unless otherwise provided by this chapter, the ~~[The]~~ treasurer shall conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code ~~[the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]~~. The treasurer may designate one or more representatives to conduct the hearings and may prescribe the rules of procedure governing the hearings.

SECTION 39. Section 154.201, Tax Code, is amended to read as follows:

Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each distributor, wholesaler, ~~[and]~~ bonded agent, and export warehouse shall keep records at each place of business of all cigarettes purchased or ~~[and]~~ received, including records of those cigarettes for which no tax is due under federal law. Each retailer shall keep records at a single location, which the retailer shall designate as its principal place of business in this state, of all cigarettes purchased and received. These records must include:

(1) the name and address of the shipper or carrier and the mode of transportation;

(2) all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express receipts;

(3) the date and the name of the place of origin of the cigarette shipment;

(4) the date and the name of the place of arrival of the cigarette shipment;

(5) a statement of the number, kind, and price paid for cigarettes, including cigarettes in stamped and unstamped packages;

(6) the name, address, permit number, and tax identification number of the seller; and

(7) any other information required by rules of the treasurer.

SECTION 40. Section 154.301, Tax Code, is amended to read as follows:

Sec. 154.301. COMPLIANCE INVESTIGATION AND RECOVERY OF ~~[AUDIT]~~ COSTS. (a) If the treasurer has reason to believe that a person has failed to pay a tax or penalty in the proper manner when due, as required by this chapter, or otherwise failed to comply with this chapter, the treasurer may employ auditors and investigators to determine compliance and any ~~[the]~~ amount due. If the treasurer determines that the person has not paid the tax or penalty or has failed to comply with this chapter, the treasurer may require the person to ~~[shall]~~ pay the reasonable expenses incurred for the compliance investigation and audit as an additional penalty.

(b) The treasurer shall deposit funds paid under this section to the credit of the general revenue ~~[a special]~~ fund in the treasury to be used for making audits, ~~conducting investigations, or as otherwise appropriated.~~ The treasurer may use other funds available for audits as appropriated by the legislature ~~[when the special fund is exhausted].~~

SECTION 41. Section 154.304(a), Tax Code, is amended to read as follows:

(a) To determine the tax liability of a person dealing in cigarettes or compliance by the person with this chapter, the treasurer may:

(1) inspect any premises, including a vending machine and its contents, where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary to determine the tax liability or compliance with this chapter;

(3) examine the records required by this chapter or other records, books, documents, papers, accounts, and objects that the treasurer determines are necessary for conducting a complete examination; and

(4) examine stocks of cigarettes and cigarette stamps.

SECTION 42. Section 154.308, Tax Code, is amended to read as follows:

Sec. 154.308. DEFICIENCY DETERMINATION, PENALTIES, AND INTEREST. (a) If the treasurer has reasonable cause to believe that a tax report or the amount of tax paid is inaccurate, the treasurer may compute and determine the amount of tax, penalty, and interest to be paid from information contained in the report or from any other information available to the treasurer.

(b) On making a deficiency determination, the treasurer shall notify the person by certified mail, return receipt requested. Service by mail is complete when the notice is received, as evidenced by return receipt from the U.S. Postal Service.

SECTION 43. Section 155.041(g), Tax Code, is amended to read as follows:

(g) All financial information provided under this section is confidential and not subject to the open records law, Chapter 552, Government Code ~~[424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)].~~

SECTION 44. Section 155.059, Tax Code, is amended to read as follows:

Sec. 155.059. FINAL SUSPENSION OR REVOCATION OF PERMIT.

(a) The treasurer may revoke or suspend a person's ~~[distributor's, wholesaler's, bonded agent's, or retailer's]~~ permit if the treasurer finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or an administrative rule made under this chapter.

(b) If the treasurer intends to suspend or revoke a permit, the treasurer shall provide the permit holder with written notice that includes a statement:

(1) of the reason for the intended revocation or suspension;

(2) that the permit holder is entitled to a hearing by the treasurer on the proposed suspension or revocation; and

(3) of the date, time, and place of the hearing.

(c) The treasurer shall mail the written notice by certified mail, return receipt requested, to the permit holder's mailing address as it appears in the treasurer's records ~~[place designated on the application for a permit as the place of business]~~. Service by mail is complete when the notice is received, as evidenced by the return receipt from the United States Postal Service.

(d) The treasurer shall give the permit holder not less than 10 days' notice of a final ~~[may not schedule the]~~ hearing ~~[before the 10th working day after the date the permit holder received the notice]~~.

(e) A permit holder may appeal the decision of the treasurer to a district court in Travis County not later than the 30th day after the date the treasurer's decision becomes final.

(f) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute tobacco products from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(g) If the treasurer suspends or revokes a permit, the treasurer shall provide written notice of the suspension or revocation, within a reasonable time, to each permit holder in the state. A permit holder violates Section 155.0415(a) by selling or distributing tobacco products to a person whose permit has been suspended or revoked only after the permit holder receives written notice of the suspension or revocation from the treasurer.

SECTION 45. Subchapter C, Chapter 155, Tax Code, is amended by adding Section 155.0591 to read as follows:

Sec. 155.0591. SUMMARY SUSPENSION OF A PERMIT. (a) The treasurer may suspend a person's permit without notice or a hearing for the person's failure to comply with this chapter or a rule adopted under this chapter if the person's continued operation constitutes an immediate and substantial threat to the collection of taxes imposed by this chapter and attributable to the person's operation.

(b) If the treasurer summarily suspends a person's permit, proceedings for a preliminary hearing before the treasurer or the treasurer's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than 10 days after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a person's permit, the treasurer shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the treasurer or the treasurer's representative and of the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer, employee, or agent of the permit holder or sent by certified or

registered mail, return receipt requested, to the permit holder's mailing address as it appears in the treasurer's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the permit holder shall immediately surrender the permit to the treasurer. If notice is served by mail, the permit holder shall immediately return the permit to the treasurer.

(f) Section 155.059, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing.

SECTION 46. Section 155.0595, Tax Code, is amended to read as follows:

Sec. 155.0595. HEARINGS. Unless otherwise provided by this chapter, the [The] treasurer shall conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code [the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]. The treasurer may designate one or more representatives to conduct the hearings and may prescribe the rules of procedure governing the hearings.

SECTION 47. Section 155.101, Tax Code, is amended to read as follows:

Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Each distributor, wholesaler, [and] bonded agent, and export warehouse shall keep records at each place of business of all tobacco products purchased or [and] received. Each retailer shall keep records at a single location, which the retailer shall designate as its principal place of business in the state, of all tobacco products purchased and received. These records must include:

- (1) the name and address of the shipper or carrier and the mode of transportation;
- (2) all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express receipts;
- (3) the date and the name of the place of origin of the tobacco product shipment;
- (4) the date and the name of the place of arrival of the tobacco product shipment;
- (5) a statement of the number, kind, and price paid for the tobacco products;
- (6) the name, address, permit number, and tax identification number of the seller; and
- (7) any other information required by rules of the treasurer.

SECTION 48. Section 155.181, Tax Code, is amended to read as follows:

Sec. 155.181. COMPLIANCE INVESTIGATION AND RECOVERY OF [AUDIT] COSTS. (a) If the treasurer has reason to believe that a person has failed to pay a tax or penalty in the proper manner when due or otherwise failed to comply with[, as required by] this chapter, the treasurer

may employ auditors and investigators to determine compliance and any ~~[the]~~ amount due. If the treasurer determines that the person has not paid the tax or penalty or has failed to comply with this chapter, the treasurer may require the person to ~~[shall]~~ pay the reasonable expenses incurred in the compliance investigation and audit as an additional penalty.

(b) The treasurer shall deposit funds paid under this section to the credit of the general revenue ~~[a special]~~ fund in the treasury to be used for making audits, conducting investigations, or as otherwise appropriated. The comptroller ~~[treasurer]~~ may use other funds available for audits as appropriated by the legislature ~~[when the special fund is exhausted]~~.

SECTION 49. Section 155.183(a), Tax Code, is amended to read as follows:

(a) To determine the tax liability of a person dealing in tobacco products or compliance by the person with this chapter, the treasurer may:

(1) inspect any premises, including a vending machine and its contents, where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary to determine the tax liability or compliance with this chapter;

(3) examine the records required by this chapter or other records, books, documents, papers, accounts, and objects that the treasurer determines are necessary for conducting a complete examination; and

(4) examine stocks of tobacco products.

SECTION 50. Section 155.185, Tax Code, is amended to read as follows:

Sec. 155.185. DEFICIENCY DETERMINATION, PENALTIES, AND INTEREST. (a) If the treasurer has reasonable cause to believe that a tax report or the amount of tax is inaccurate, the treasurer may compute and determine the amount of tax, penalty, and interest to be paid from information contained in the report or from any other information available to the treasurer.

(b) On making a deficiency determination, the treasurer shall notify the person by certified mail, return receipt requested. Service by mail is complete when the notice is received, as evidenced by return receipt from the U.S. Postal Service.

SECTION 51. Section 155.212, Tax Code, is amended to read as follows:

Sec. 155.212. BOOKS AND RECORDS. A person commits an offense if the person:

(1) knowingly makes, delivers to, and files with the treasurer a false return or an incomplete return or report;

(2) knowingly fails to make and deliver to the treasurer a return or report as required by this chapter;

(3) destroys, mutilates, or conceals a book or record required by this chapter;

(4) refuses to permit the attorney general or the treasurer to inspect and audit books and records that are required by this chapter or that are incidental to the conduct of the tobacco products business;

(5) knowingly makes a false entry or fails to make entries in the books and records required by this chapter; or

(6) fails to keep books and records for four years as required by this chapter.

SECTION 52. Section 156.001, Tax Code, is amended to read as follows:

Sec. 156.001. DEFINITION. In this chapter, "hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, or rooming house. The term~~[, but]~~ does not include:

(1) a hospital, sanitarium, or nursing home; or

(2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

SECTION 53. Sections 159.101(f), (g), (h), and (i), Tax Code, are amended to read as follows:

(f) ~~[When the comptroller makes an assessment under this chapter, the comptroller shall issue a determination stating the amount and that the tax collection is in jeopardy. The amount determined is due and payable immediately. A determination made under this chapter becomes final on the expiration of 20 days after the day on which the notice of the determination was served by personal service or by mail unless a petition for a redetermination is filed before the determination becomes final.~~

~~[(g)]~~ If a determination made under this chapter becomes final without payment of the amount of the determination being made, the comptroller shall add to the amount a penalty of 10 percent of the amount of the tax and interest.

~~[(g)]~~ [(h)] In a redetermination proceeding held or a judicial proceeding brought under this chapter, a certificate from the comptroller that shows the issued determination is prima facie evidence of:

(1) the determination of the stated tax or amount of the tax;

(2) the stated amount of the penalties and interest; and

(3) the compliance of the comptroller with this chapter in computing and determining the amount due.

~~[(h)]~~ [(i)] The suppression of evidence on any ground in a criminal case that arises out of facts on which a determination is made under this chapter or the dismissal of criminal charges in such a case does not affect a determination made under this chapter.

SECTION 54. Section 159.103, Tax Code, is amended to read as follows:

Sec. 159.103. EXEMPTION. The possession, purchase, acquisition, importation, manufacture, or production of a taxable substance is exempt from the tax imposed by this chapter if the activity is authorized by law.

SECTION 55. The heading to Subchapter C, Chapter 159, Tax Code, is amended to read as follows:

SUBCHAPTER C. CRIMINAL PROVISIONS[~~SEIZURE~~
~~AND FORFEITURE~~]

SECTION 56. Section 159.203, Tax Code, is amended to read as follows:

Sec. 159.203. PREVIOUSLY USED CERTIFICATES. (a) A person commits an offense if the person:

(1) uses, sells, offers for sale, or possesses for use or sale previously used tax payment certificates; or

(2) attaches or causes to be attached a previously used tax payment certificate to a taxable substance.

(b) An offense under this section is a felony of the third degree.

(c) Venue of a prosecution under this section is in Travis County.

SECTION 57. Section 159.205, Tax Code, is amended to read as follows:

Sec. 159.205. RIGHT TO COLLECT SUBORDINATE TO OTHER LAWS [FORFEITURE]. (a) [~~Property seized under Section 159.204 of this code is subject to forfeiture to the state in the same manner as provided for forfeiture of seized property under Chapter 103, Alcoholic Beverage Code. Property forfeited to the state that is not ordered destroyed may be used by the seizing agency for official purposes or sold at public auction in the manner provided by law for sheriff's sales. The proceeds from the sale of property forfeited under this section, after satisfaction of all costs, shall be disposed of in the manner provided for by Article 59.06, Code of Criminal Procedure.~~]

[(b)] The right of the comptroller to collect the tax imposed by this chapter, including applicable penalty and interest, is subordinate to the right of a federal, state, or local law enforcement authority to seize, forfeit, and retain property under Chapter 481, Health and Safety Code; Chapter 59, Code of Criminal Procedure; or any other criminal forfeiture law of this state or of the United States. A lien filed by the comptroller as a result of the failure of a dealer to pay the tax, penalty, or interest due under this chapter is also subordinate to those rights.

[(b)] This section does not affect the validity of a lien or a collection action relating to the tax imposed by this chapter under any other circumstance.

SECTION 58. Section 159.206, Tax Code, is amended to read as follows:

Sec. 159.206. SETTLEMENT OR COMPROMISE OF TAX. [(a)] The comptroller may settle or compromise a tax, penalty, or interest imposed under this chapter only if:

(1) the prosecutor of a criminal offense under this chapter or of another offense arising out of the same incident or transaction requests in writing that the comptroller settle or compromise and specifies the reasons for the request; and

(2) the comptroller determines that the settlement or compromise is in the best interest of the state.

~~[(b) The prosecutor of a criminal offense under this chapter or of another criminal offense arising out of the same incident or transaction or the taxpayer or the taxpayer's representative may request in writing that the comptroller defer an administrative hearing on a determination made on this chapter until a trial has been completed in the criminal case involving the same incident or transaction or another disposition has been made of the case. The comptroller may comply with a request to defer an administrative hearing if the comptroller determines that the deferral would be in the best interest of the state. This subsection does not prohibit the comptroller from filing a lien or taking any other action to collect the tax in the manner permitted under this code before the conclusion of an administrative hearing.]~~

SECTION 59. Section 201.201, Tax Code, is amended to read as follows:

Sec. 201.201. TAX DUE. The tax imposed by this chapter for gas produced and saved is due at the office of the comptroller in Austin on the 20th [last] day of the second [each calendar] month following the month of production ~~[for gas produced and saved during the preceding calendar month].~~

SECTION 60. Section 361.138, Health and Safety Code, is amended by amending Subsection (a) and by adding Subsections (l), (m), and (n) to read as follows:

(a) In this section:

(1) "Engaged in business in this state" has the meaning provided under Sections 151.107(a) and (b), Tax Code.

(2) "Lead-acid[; "lead-acid] battery" means any battery which contains lead and sulfuric acid.

(3) "Purchased for resale" means acquired by means of a sale for resale as defined in Section 151.006, Tax Code.

(4) "Storage" and "use" have the meanings assigned those terms by Section 151.011, Tax Code.

(l) A fee is imposed on the storage, use, or other consumption in this state of a lead-acid battery, unless purchased for resale, at the same rate as provided by Subsection (b).

(m) A person storing, using, or consuming a lead-acid battery in this state is liable for the fee imposed by Subsection (l) and is responsible for reporting and paying it to the comptroller in the same manner as a person required to collect the fee provided for in Subsections (c)(2) and (d).

(n) A person storing, using, or consuming a lead-acid battery in this state is not liable for the fee if the person pays the fee to a wholesaler or retailer engaged in business in this state or other person authorized by the comptroller to collect the fee and receives from the person a receipt showing that the fee has been paid.

SECTION 61. Section 361.472, Health and Safety Code, is amended by adding Subsection (k) to read as follows:

(k) In this section:

(1) "Engaged in business in this state" has the meaning provided under Sections 151.107(a) and (b), Tax Code.

(2) "Purchased for resale" means acquired by means of a sale for resale as defined in Section 151.006, Tax Code.

(3) "Storage" and "use" have the meanings assigned those terms by Section 151.011, Tax Code.

SECTION 62. Section 361.472(c), Health and Safety Code, is amended to read as follows:

(c) A fee may not be assessed for a bicycle tire or a solid industrial tire.

SECTION 63. Section 4A(e), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The Municipal Sales and Use Tax Act (Chapter 321, Tax Code) governs an election to authorize the imposition of the sales and use tax under this section and governs the imposition, computation, administration, governance, abolition, and use of the tax except as inconsistent with this section. The tax imposed under this section [If an election is held under Subsection (f) of this section at the same time as another election under this section and an additional sales and use tax under Section 321.101(b), Tax Code, is adopted or repealed or its rate is increased or reduced, each tax under this section and the imposition or change in the rate of the additional sales and use tax] takes effect as provided by Section 321.102(a) [321.102(b)], Tax Code.

SECTION 64. Sections 12(3) and (6), Article 8817, Revised Statutes, are amended to read as follows:

(3) The application shall be accompanied by a [sworn] written statement executed by the individual designated to maintain the records and make reports that he is aware of and accepts this responsibility.

(6) The application must contain a statement that the information contained in it is true and correct[~~and this statement shall be made under oath~~].

SECTION 65. Section 19(1), Article 8817, Revised Statutes, is amended to read as follows:

(1) The Comptroller may not issue a general business [or import] license for a business under this Article if the Comptroller finds that the applicant:

(a) has been finally convicted of a felony in a court of competent jurisdiction during the five years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the two years preceding the filing of the application.

SECTION 66. Section 159.204, Tax Code, is repealed.

SECTION 67. (a) The change in law made by this Act does not affect the collection or the enforcement of the payment of taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes. This subsection does not apply to the change to Section 201.201, Tax Code, as amended by this Act, for taxes made due by that section in the second month after the effective date of that section.

(b) The change in law made to Chapter 159, Tax Code, by this Act applies only to a violation of the penal law of this state that occurs on or after the effective date of this Act. A violation of the penal law of this state occurs on or after the effective date of this Act if any element of the violation occurs on or after that date.

(c) A violation of the penal law of this state that occurs before the effective date of this Act is governed by the law in effect at the time the violation occurred, and that law is continued in effect for that purpose.

(d) The legislature intends that Sections 151.318(b)(2) and (q), Tax Code, as added by this Act, other than the last two sentences of Subsection (q), be considered as a clarification of existing law and not a substantive change.

SECTION 68. If legislation is enacted transferring the responsibilities of the treasurer to the comptroller, the comptroller shall administer this Act consistent with that legislation.

SECTION 69. This Act takes effect October 1, 1995.

SECTION 70. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 640 on page 2 line 11 by inserting the following and renumbering subsequent sections accordingly:

SECTION 5. Section 151.0036, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) "Debt collection service" includes the service performed for which a fee is collected under Chapter 617, Acts of the 68th Legislature, Regular Session, 1983 (Article 9022, Vernon's Texas Civil Statutes). The person collecting the check shall add the amount of the tax to the fee in accordance with Section 151.052 and shall collect the fee from the drawer or endorser of the check.

Floor Amendment No. 2

Amend C.S.S.B. 640 as follows:

(1) On page 3, line 5, strike the word "produce" and insert "product".

(2) On page 10, line 6, between "(c)" and the word "to" insert "and (d)".

Amendment No. 3

Amend C.S.S.B. 640 as follows:

1. On page 22, line 4, insert the following as SECTION 25, and renumber the remaining SECTIONS accordingly:

SECTION 25. Section 153.205, Tax Code, is amended by adding a new subsection (j), to read as follows:

(j) A sale of diesel fuel may be made without collecting tax to a purchaser who operates one or more motor vehicles on the public highway.

and who furnishes to a permitted supplier a signed statement only as provided in this subsection.

(1) The statement must stipulate that all the diesel fuel will be consumed by the purchaser for purposes other than operating a motor vehicle on the public highway, and that no diesel fuel purchased on a signed statement will be resold or delivered into the fuel supply tanks of a motor vehicle.

(2) Diesel fuel which may be sold without collection of tax under this subsection must be of a type that may not be legally used by the purchaser for the operation of a motor vehicle on the public highway under state or federal law.

(3) Subsections (a), (c)(3), and (d) do not apply to sales of fuel under this subsection.

2. On page 22, line 16, insert the following as SECTION 26 and renumber the remaining SECTIONS accordingly:

SECTION 26. Section 153.210, Tax Code, is amended by adding subsection (c), to read as follows:

(c) A person who holds a diesel prepaid user permit may elect to qualify under this subsection for a nonrefundable credit.

(1) At the time a person applies to renew a diesel prepaid user permit, the person may present to the comptroller a distribution log reflecting the items of information described in (c)(5) concerning fuel delivered unto the motor vehicle for which the permit is issued during the period covered by the permit.

(2) the comptroller shall compute the amount of tax due on the amount of fuel shown on the log and if that amount is less than the amount paid for the permit, the permit holder shall be entitled to a credit for the difference.

(3) A credit claimed under this section may be applied only against the renewal or purchase of another diesel prepaid user permit for the following year, and in no case may the amount of the credit be refunded.

(4) The comptroller may require supporting evidence and may examine the permit holder's records either before or after issuance of a permit to determine the amount of tax due. The comptroller may by rule prescribe other items of information a person must submit under this subsection.

(5) Information required to be submitted under this subsection includes:

(A) the date of delivery of the fuel into the motor vehicle;

(B) the number of gallons delivered;

(C) the odometer reading of the motor vehicle at the time of delivery;

(D) the state highway license number or motor vehicle identification number.

3. On page 26, line 3, after "fuel" insert "of a type that may be legally used by the purchaser for the operation of a motor vehicle on the public highway under state or federal law".

4. On page 29, line 25, after "fuel", insert "of a type that may be legally used by the purchaser for the operation of a motor vehicle on the public highway under state or federal law".

Floor Amendment No. 5

Amend C.S.S.B. 640 as follows:

(1) Insert the following appropriately numbered sections to the bill to read as follows:

SECTION ____ . Section 324.099, Local Government Code, is amended by adding Subsections (j) and (k) to read as follows:

(j) The board may settle a claim for a penalty or interest accrued on a tax imposed by this chapter if the board finds that the revenue permit holder exercised reasonable diligence to comply with this chapter.

(k) The district may impose different tax rates for the different types of services and different types of rental items to which Subsection (b)(3) applies but none of the rates may exceed the maximum rate provided by that subsection.

(2) Renumber subsequent sections of the bill accordingly.

Floor Amendment No. 9

Amend C.S.S.B. 640 as follows:

Add new section 64 and 65 and renumber subsequent sections accordingly

SECTION 64. Section 151.027(c), Tax Code, is amended to read as follows:

(c) This section does not prohibit:

(1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, or by an official of the United States if a reciprocal agreement exists;

(2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;

(3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;

(4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this chapter against the same taxpayer who furnished the information; ~~or~~

(5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected; ~~or~~

(6) the delivery of information to an eligible municipality in accordance with Section 321.3022.

SECTION 65. Subchapter D, Chapter 321, Tax Code, is amended by adding Section 321.3022 to read as follows:

Sec. 321.3022. TAX INFORMATION. (a) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter and that has a population of less than 50,000 information relating to the

amount of tax paid to the municipality under this chapter during the preceding or current calendar year by each person doing business in the municipality who annually remits to the comptroller state and local sales tax payments of more than \$100,000.

(b) A request for information under this section must be made in writing by the municipality's mayor or chief administrative officer.

(c) Information received by a municipality under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting.

(d) The comptroller may set and collect from a municipality reasonable fees to cover the expense of compiling and providing information under this section.

Amendment No. 10

Amend C.S.S.B. 640 as follows:

Add a new SECTION at line 4 on page 2 of C.S.S.B. 640 and renumber all remaining SECTIONS accordingly, the new SECTION to read as follows:

"SECTION 4. Section 151.0038, Tax Code, is amended to read as follows:

Sec. 151.0038. "Information Service."

(a) "Information service" means:

(1) furnishing general or specialized news or other current information, including financial information, unless furnished to

(A) a newspaper or to a radio or television station licensed by the Federal Communications Commission; or

(B) a member of a homeowners association of a residential subdivision or condominium development, and is furnished by the association or on behalf of the association; or

(2) electronic data retrieval or research.

(b) In this section, "newspaper" has the the meaning assigned by Section 151.319(f)."

The amendments were read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to S.B. 640 by a viva voce vote.

SENATE BILL 642 WITH HOUSE AMENDMENTS

Senator Montford called S.B. 642 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend S.B. 642 as follows:

(1) On page 6, line 2, strike the sentence beginning after "(1)" and substitute "the taxing unit does not send another tax bill on the property in question at least 21 days before the delinquency date to the current

mailing address furnished by the property owner and the property owner establishes that a current mailing address was furnished to the appraisal district by the property owner for the tax bill before September 1 of the year in which the tax is assessed; or".

(2) On page 6, line 15, strike the sentence beginning after "[~~(b)~~]" and substitute "For the purposes of this section, a property owner is considered to have furnished a current mailing address to the taxing unit or to the appraisal district if the current address is expressly communicated to the appraisal district in writing or if the appraisal district received a copy of a recorded instrument transferring ownership of real property and the current mailing address of the new owner is included in the instrument or in accompanying communications or letters of transmittal."

(3) On page 7, line 4, strike the sentence beginning after "[~~(e)~~]" and substitute "A property owner is not entitled to relief under Subsection (b) of this section if the property owner or the owner's agent furnished an incorrect mailing address to the appraisal district or the taxing unit or to an employee or agent of the district or unit."

(4) On page 7, line 9, strike the sentence beginning after "g" and substitute "Taxes for which penalties and interest have been waived under Subsection (b) of this section must be paid within 21 days of the property owner having received a bill for those taxes at the current mailing address."

Amendment No. 2

Amend **S.B. 642** by adding appropriately numbered sections to read as follows:

SECTION ____ . Subsections (b) and (d) of Section 42.08, Tax Code, are amended to read as follows:

(b) Except as provided in subsection (d), a [A] property owner who appeals as provided by this chapter must pay taxes on the property subject to the appeal in the amount required by this subsection before the delinquency date or the property owner forfeits the right to proceed to a final determination of the appeal. The amount of taxes the property owner must pay on the property before the delinquency date to comply with this subsection is:

(1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute or the amount of taxes imposed on the property in the preceding year, whichever is greater; or

(2) the amount of taxes due on the property under the order from which the appeal is taken.

(d) After filing an oath of inability to pay the taxes at issue, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal, if the court after notice and hearing, finds that such prepayment would constitute an unreasonable restraint upon the party's right of access to the courts. On the motion of a party, the court shall hold a hearing to review and determine compliance with this section, and the reviewing court may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. If the court determines that the property owner has not substantially complied with this

section, the court shall dismiss the pending action. If the court determines that the property owner has substantially but not fully complied with this section, the court shall dismiss the pending action unless the property owner fully complies with the court's determination within 30 days of the determination.

SECTION ____ . Section 112.108, Tax Code, is amended to read as follows: Sec. 112.108. Other Actions Prohibited. Except for a restraining order or injunction issued as provided by this subchapter, a court may not issue a restraining order, injunction, declaratory judgment, writ of mandamus or prohibition, order requiring the payment of taxes or fees into the registry or custody of the court, or other similar legal or equitable relief against the state or a state agency relating to the applicability, assessment, collection, or constitutionality of a tax or fee covered by this subchapter or the amount of the tax or fee due; provided, however, that after filing an oath of inability to pay the tax, penalties, and interest due, a party may be excused from the requirement of prepayment of tax as a prerequisite to appeal, if the court, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint upon the party's right of access to the courts. The court may grant such relief as may be reasonably required by the circumstances. A grant of declaratory relief against the state or a state agency shall not entitle the winning party to recover attorney fees.

Floor Amendment No. 3

Amend S.B. 642 as follows:

(1) Between Sections 11 and 12 (House committee printing, page 7, between lines 12 and 13), insert the following section and renumber subsequent sections accordingly:

SECTION 12. (a) This section applies only to a county with a population of more than 225,000.

(b) An exemption from ad valorem taxation adopted by the commissioners court of a county under Section 11.13(n), Tax Code, after May 1, 1995, for the 1995 tax year is validated as of the date the exemption was adopted.

(c) The ad valorem taxation proceedings of the county occurring after the adoption of the exemption are validated and may not be held invalid because the exemption under Section 11.13(n), Tax Code, was not adopted in accordance with that section.

(d) This section does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

(e) This section expires January 1, 1996.

(2) Strike Sections 13 and 14 (House committee printing, page 7, lines 19-24) and substitute the following:

SECTION 14. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1996.

(b) Section 12 of this Act takes effect immediately.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendments were read.

Senator Montford moved to concur in the House amendments to **S.B. 642**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 643 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 643** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 643** as follows:

On page 6, line 14, insert the following as SECTION 7 of the bill, and renumber the remaining SECTIONS of the bill accordingly:

SECTION 7. (a). If **H.B. 1419**, 74th Legislature, Regular Session, 1995, adding new Sections 28.18 and 32.23 to the Alcoholic Beverage Code, is enacted and becomes law, Subdivision (1), Subsection (b), Section 183.001, Tax Code, is amended to read as follows:

(1) "Permittee" means a mixed beverage permittee, ~~[or] a private club registration permittee, private club exemption certificate permittee, a private club late hours permittee, a daily temporary private club permittee, a private club registration permittee holding a food and beverage certificate, a daily temporary mixed beverage permittee, a mixed beverage late hours permittee, a mix beverage permittee holding a food and beverage certificate, or a caterer permittee.~~

(b) The change in law made by this SECTION shall be effective September 1, 1995. If **H.B. 1419**, 74th Legislature, Regular Session, 1995, adding new Sections 28.18 and 32.23 to the Alcoholic Beverage Code, is not enacted and does not become law, this SECTION shall not take effect.

The amendment was read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendment to **S.B. 643** by a viva voce vote.

GUESTS PRESENTED

The Presiding Officer, Senator Truan in Chair, introduced to the Senate a group of students and their teachers from St. Gertrude's Catholic Elementary School of Kingsville.

The Senate welcomed its guests.

SENATE BILL 644 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 644** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **S.B. 644**, SECTION 19, Section 171.203(d) after the words "currently employed by the corporation" by adding "or a related corporation listed in Subsection (a)(1) or (2) above" prior to the period "." at the end of the sentence.

The amendment was read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendment to **S.B. 644** by a viva voce vote.

SENATE BILL 744 WITH HOUSE AMENDMENTS

Senator Cain called **S.B. 744** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **S.B. 744** on page 2, line 6, by striking line 5 and inserting a semicolon after the word "systems" and inserting the following before the period:

- (7) electric systems improvements; or
- (8) other energy conservation-related equipment.

Floor Amendment No. 2

Amend **S.B. 744** by adding new Sec. 302.007 to read as follows:

Sec. 302.007. NON-CONSUMPTIVE WATER SERVICE FOR ENERGY RECOVERY SYSTEMS. The governing body of a local government or retail public utility may provide non-consumptive water service for an energy recovery system that circulates water in a closed loop and returns it to the water main.

The amendments were read.

Senator Cain moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.B. 744** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Cain, Chair; West, Gallegos, Whitmire, and Wentworth.

SENATE CONCURRENT RESOLUTION 164

Senator Cain offered the following resolution:

S.C.R. 164, Declaring Rains County the Eagle Capital of Texas.

The resolution was read.

On motion of Senator Cain and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

SENATE BILL 597 WITH HOUSE AMENDMENT

Senator Ratliff called **S.B. 597** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 597** as follows:

On page 3, strike Section 8 and substitute the following:

Sec. 8. REQUIRED DISCLOSURE; ADOPTION OF RULES. (a) Each licensed entity shall disclose fully to each of its policyholders, contract holders or covered persons the requirements of this article.

(b) The disclosure shall be forwarded to applicable policyholders, contract holders or covered persons either:

(i) within 90 days following lapse of a policy regulated by this Article 3.44d, or

(ii) within 90 days after the effective date of this Act to each existing policyholder whose policy is regulated by this Article 3.44d. Disclosure thereafter on policies issued after the effective date of this Act may be made by including the disclosure information in the policy or in an endorsement attached to the policy.

(c) Notice will be deemed to be in compliance with this article if mailed by first class mail to the last known address of the policyholder or if contained in the policy form or as an endorsement thereto.

(d) The commissioner of insurance shall adopt reasonable rules to implement this article. Such disclosure must be made in the form and manner prescribed by the commissioner after notice and hearing.

The amendment was read.

On motion of Senator Ratliff and by unanimous consent, the Senate concurred in the House amendment to **S.B. 597** by a viva voce vote.

CONCLUSION OF MORNING CALL

The Presiding Officer at 12:08 p.m. announced the conclusion of morning call.

(President in Chair)

RECESS

On motion of Senator Truan, the Senate at 12:09 p.m. recessed until 1:10 p.m. today.

AFTER RECESS

The Senate met at 1:10 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 38, Memorializing the Congress of the United States to enact legislation to amend the food stamp program by adding a special provision to allow food stamp workers to reissue food stamp benefits to family members fleeing from domestic violence.

S.C.R. 89, Directing the Texas Department of Transportation to repair and maintain in a safe condition for highway traffic the suspension bridges in Shackelford, Mills, and San Saba counties. (As amended)

S.C.R. 101, Designating the battleship *Texas* as the official State Ship of Texas. (As amended)

S.C.R. 124, Directing the Texas Higher Education Coordinating Board to study the feasibility of establishing regional areas of principal responsibility for health professions education.

S.C.R. 136, Designating the week of each year that begins with Father's Day as Texas Prostate Cancer Awareness Week. (As amended)

S.C.R. 146, Directing that the new girls' dormitory on the campus of the Texas School for the Deaf be named Emily Lewis Hall.

S.C.R. 147, Directing that the Vocation Annex on the campus of the Texas School for the Deaf be designated the Kleberg Building.

S.C.R. 148, Directing that the Vocational School on the campus of the Texas School for the Deaf be named the John Salmon Ford Building.

S.C.R. 149, Directing that the Upper School Library on the campus of the Texas School for the Deaf be named the Jack Hoit Hensley Library.

H.C.R. 205, Designating September as State Noodle Cook-Off Month in Lee County.

H.C.R. 209, Designating the Lone Star Flight Museum of Galveston the Texas Aviation Hall of Fame.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

SENATE BILL 488 WITH HOUSE AMENDMENT

Senator Wentworth called **S.B. 488** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 488** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 53.021(c), Property Code, is amended to read as follows:

(c) An architect, engineer, or surveyor who prepares a plan or plat ~~under or by virtue of a written contract with the owner or the owner's agent, trustee, or receiver,~~ in connection with the ~~actual or proposed design,~~ construction, or repair of improvements on real property ~~or the location of the boundaries of real property,~~ has a lien on the property [if:

~~[(1) the architect, engineer, or surveyor prepares the plan or plat pursuant to a written contract, in recordable form, that contains a legal description of the real property on which the construction is to be performed;~~

~~[(2) the contract is recorded with the county clerk of the county in which the property is located before the date construction is commenced; and~~

~~[(3) the plan or plat prepared by the architect, engineer, or surveyor asserting the lien is used in performing such construction].~~

SECTION 2. Section 53.023, Property Code, is amended to read as follows:

Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures payment for:

(1) the labor done or material furnished for the construction or repair; ~~[or]~~

(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value; ~~or~~

(3) the preparation of a plan or plat by an architect, engineer, or surveyor in accordance with Section 53.021(c).

SECTION 3. Section 53.053(a), Property Code, is amended to read as follows:

(a) For purposes of Section 53.052, indebtedness accrues on a contract under which a plan or plat is prepared, labor was performed, materials furnished, or specially fabricated materials are to be furnished in accordance with this section.

SECTION 4. Section 53.122(a), Property Code, is amended to read as follows:

(a) Except as provided by Subchapter E and Section 53.124(e), perfected mechanic's liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

SECTION 5. Section 53.124, Property Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsection (e), for [For] purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.

(e) The time of inception of a lien of an architect, engineer, or surveyor that is created under Section 53.021(c) is the date of recording of an affidavit of lien under Section 53.052. The priority of a lien claimed by an architect, engineer, or surveyor with respect to other mechanic's liens is determined by the date of recording. A lien created under Section 53.021(c) is not valid or enforceable against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.

SECTION 6. Section 53.021(d), Property Code, is repealed.

SECTION 7. (a) The changes in law made by this Act apply only to a lien of an architect, engineer, or surveyor who prepares a plan or plat under a contract entered into on or after the effective date of this Act.

(b) A lien of an architect, engineer, or surveyor who prepares a plan or plat under a contract entered into before the effective date of this Act is governed by the law as it existed on the date on which the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 1995.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Wentworth and by unanimous consent, the Senate concurred in the House amendment to **S.B. 488** by a viva voce vote.

GUEST PRESENTED

The President introduced to the Senate Bexar County Judge, Cyndi Taylor Krier, former Member of the Texas Senate.

The Senate welcomed Judge Krier.

SENATE BILL 1365 WITH HOUSE AMENDMENT

Senator Wentworth called **S.B. 1365** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 1365** as follows:

This would be amendment 1 for prepaid legal bill.

Section 2. Insert Section 23.6 before 23.10.

New 23.6 (f)

All legal service contracts and related promotional material issued pursuant to Chapter 23, and the issuance of legal service contracts, pursuant to the Insurance Code, Article 5.13-1, shall be truthful and accurate and shall properly describe the coverage offered. Such description should include, but not be limited to, a description of coverage offered as either an indemnity coverage or a contract that provides only consultation and advice on simple legal matters, either alone or in combination with a referral service, and that provides fee discounts for other matters.

The amendment was read.

On motion of Senator Wentworth and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1365** by a viva voce vote.

SENATE BILL 1371 WITH HOUSE AMENDMENT

Senator Wentworth called **S.B. 1371** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 1371** (House committee report) in SECTION 1 of the bill, Section 364.031, Health and Safety Code (page 2, between lines 24 and 25), by adding a new Subsection (e) to read as follows:

(e) This section does not expand the authority granted to a county under Section 364.013.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **S.B. 1371**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1017 WITH HOUSE AMENDMENTS

Senator Wentworth called **S.B. 1017** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 1017** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the designation of water quality protection zones in certain areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 26, Water Code, is amended by adding Section 26.179 to read as follows:

Sec. 26.179. DESIGNATION OF WATER QUALITY PROTECTION ZONES IN CERTAIN AREAS. (a) In this section, "water quality protection" may be achieved by:

(1) maintaining background levels of water quality in waterways; or

(2) capturing and retaining the first 1.5 inches of rainfall from developed areas.

(b) For the purpose of Subsection (a)(1), "maintaining background levels of water quality in waterways" means maintaining background levels of water quality in waterways comparable to those levels which existed prior to new development as measured by the following constituents: total suspended solids, total phosphorus, total nitrogen, and chemical and biochemical oxygen demand. Background levels shall be established either from sufficient data collected from water quality monitoring at one or more sites located within the area designated as a water quality protection zone or, if such data are unavailable, from calculations performed and certified by a registered professional engineer utilizing the concepts and data from the National Urban Runoff Program (NURP) Study or other studies approved by the Texas Natural Resource Conservation Commission (commission) for the constituents resulting from average annual runoff, until such data collected at the site are available. Background levels for undeveloped sites shall be verified based upon monitoring results from other areas of property within the zone prior to its development. The monitoring shall consist of a minimum of one stage (flow) composite sample for at least four storm events of one-half inch or more of rainfall that occur at least one month apart. Monitoring of the four constituents shall be determined by monitoring at four or more locations where runoff occurs. A minimum of four sample events per year for each location for rainfall events greater than one-half inch shall be taken. Monitoring shall occur for three consecutive years after each phase of development occurs within the Water Quality Protection Zone. Each new phase of development, including associated best management practices, will require monitoring for a three-year period. The results of the monitoring and a description of the best management practices being used throughout the zone shall be summarized in a technical report and submitted to the commission no later than April 1 of each calendar year during development of the property, although the commission may determine that monitoring is no longer required. The commission shall review the technical report. If the performance monitoring and best management practices indicate that background levels were not maintained during the previous year, the owner or developer of land within the water quality protection zone shall:

(1) modify water quality plans developed under this section for future phases of development in the water quality protection zone to the extent reasonably feasible and practical; and

(2) modify operational and maintenance practices in existing phases of the water quality protection zone to the extent reasonably feasible and practical.

Water quality monitoring shall not be required in areas using the methodology described by Subsection (a)(2).

(c) This section applies only to those areas within the extraterritorial jurisdiction, outside the corporate limits of a municipality with a population greater than 5,000 that has extended a water pollution control and abatement program to its area of extraterritorial jurisdiction, and in which the municipality either:

(1) has enacted or attempted to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area within the five years preceding the effective date of this Act, whether or not such ordinances or amendments were legally effective upon the area; or

(2) enacts or attempts to enforce three or more ordinances or amendments thereto attempting to regulate water quality or control or abate water pollution in the area in any five-year period, whether or not such ordinances or amendments are legally effective upon the area.

(d) The owner or owners of a contiguous tract of land in excess of 1,000 acres that is located within an area subject to this section may designate the tract as a "water quality protection zone." Upon prior approval of the commission, the owner of a contiguous tract of land containing less than 1,000 acres, but not less than 500 acres, that is located within an area subject to this section may also designate the tract as a "water quality protection zone." The tract shall be deemed contiguous if all of its parts are physically adjacent, without regard to easements, rights-of-way, roads, streambeds, and public or quasi-public land. The purpose of a water quality protection zone is to provide the flexibility necessary to facilitate the development of the land within the zone, but which also is intended to result in the protection of the quality of water within the zone.

(e) A water quality protection zone designated under this section shall be described by metes and bounds. The designation shall include a general description of the proposed land uses within the zone, a water quality plan for the zone, and a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone.

(f) Creation of a water quality protection zone shall become immediately effective upon recordation of the designation in the deed records of the county in which the land is located. The designation shall be signed by the owner or owners of the land, and notice of such filing shall be given to the city clerk of the municipality within whose extraterritorial jurisdiction the zone is located and the clerk of the county in which the property is located.

(g) The water quality plan for a zone, including the determination of background levels of water quality, shall be signed and sealed by a registered professional engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this section.

Upon recordation in the deed records, the water quality plan shall be submitted to and accepted by the commission for approval, and the commission shall accept and approve the plan unless the commission finds that implementation of the plan will not reasonably attain the water quality protection as defined in this section. A water quality plan may be amended from time to time upon filing with the commission, and all such amendments shall be accepted by the commission unless there is a finding that the amendment will impair the attainment of water quality protection as defined in this section. The commission shall adopt and assess reasonable and necessary fees adequate to recover the costs of the commission in administering this section. The commission's review and approval of a water quality plan shall be performed by the commission staff that is responsible for reviewing pollution abatement plans in the county where the zone is located. The review and approval of the plan shall be completed within 120 days of the date it is filed with the commission. A public hearing on the plan shall not be required, and acceptance, review, and approval of the water quality plan or water quality protection zone shall not be delayed pending the adoption of rules. The commission shall have the burden of proof for the denial of a plan or amendments to a plan, and any such denial shall be appealable to a court of competent jurisdiction.

(h) The water quality plan for a zone shall be a covenant running with the land.

(i) A municipality may not enforce in a zone any of its ordinances, land use ordinances, rules, or requirements including, but not limited to, the abatement of nuisances, pollution control and abatement programs or regulations, water quality ordinances, subdivision requirements (other than technical review and inspections for utilities connecting to a municipally owned water or wastewater system), or any environmental regulations which are inconsistent with the land use plan and the water quality plan or which in any way limit, modify, or impair the ability to implement and operate the water quality plan and the land use plan within the zone as filed; nor shall a municipality collect fees or assessments or exercise powers of eminent domain within a zone until the zone has been annexed for the municipality. A water quality protection zone may be annexed by a municipality only after the installation and completion of 90 percent of all facilities and infrastructure described in the water quality plan for the entire zone as being necessary to carry out such plan or the expiration of 20 years from the date of designation of the zone, whichever occurs first.

(j) Subdivision plats within a water quality protection zone shall be approved by the municipality in whose extraterritorial jurisdiction the zone is located and the commissioners court of the county in which the zone is located if:

(1) the plat complies with the subdivision design regulations of the county; and

(2) the plat is acknowledged by a registered professional engineer stating that the plat is in compliance with the water quality plan within the water quality protection zone.

(k) A water quality protection zone implementing a water quality plan which meets the requirements of this section shall be presumed to satisfy all other state and local requirements for the protection of water quality; provided, however, that:

(1) development in the zone shall comply with all state laws and commission rules regulating water quality which are in effect on the date the zoning is designated; and

(2) nothing in this section shall supersede or interfere with the applicability of water quality measures or regulations adopted by a conservation and reclamation district comprising more than two counties and which apply to the watershed area of a lake or reservoir.

(l)(1) One or more of the provisions of this section may be waived by the owner or owners of property that is or becomes subject to an agreement between the owner or owners of land within the zone and the municipality. The agreement shall be in writing, and the parties may agree:

(A) to guarantee continuation of the extraterritorial status of the zone and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(B) to authorize certain land uses and development within the zone;

(C) to authorize enforcement by the municipality of certain municipal land use and development regulations within the zone, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(D) to vary any watershed protection regulations;

(E) to authorize or restrict the creation of political subdivisions within the zone; and

(F) to such other terms and considerations the parties consider appropriate, including, but not limited to, the continuation of land uses and zoning after annexation of the zone, the provision of water and wastewater service to the property within the zone, and the waiver or conditional waiver of provisions of this section.

(2) An agreement under this section shall meet the requirements of and have the same force and effect as an agreement entered into pursuant to Section 42.046, Local Government Code.

(m) In addition to the requirements of Subsections (a)(1) and (a)(2), the commission may require and enforce additional water quality protection measures to comply with mandatory federal water quality requirements, standards, permit provisions or regulations.

(n) This section does not apply to an area within the extraterritorial jurisdiction of a municipality with a population greater than 900,000 that has extended to the extraterritorial jurisdiction of the municipality an ordinance whose purpose is to prevent the pollution of an aquifer which is the sole or principal drinking water source for the municipality.

SECTION 2. Section 26.177(b), Water Code, is amended to read as follows:

(b) The water pollution control and abatement program of a city shall encompass the entire city and, subject to Section 26.179 of this code, may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the commission, and whether they should be covered by a permit from the commission;

(4) in cooperation with the commission, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings;

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater; and

(6) any additional services, functions, or other requirements as may be prescribed by commission rule.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend C.S.S.B. 1017 as follows:

(1) On page 6, line 1, insert the following sentence after the period: "The water quality plan, or any amendment thereto, shall be effective upon recordation of the plan or the amendment, in the deed records, and shall apply during the period of review and approval by the commission or appeal of the denial of the plan or any amendment."

Floor Amendment No. 2

Amend C.S.S.B. 1017 as follows:

(1) On page 3, line 12, strike "that has extended a water pollution control and abatement program to its area of extraterritorial jurisdiction".

(2) On page 4, line 9, insert the following after "quasi-public land" and before the period: ", or is part of an integrated development under common ownership or control"

(3) On page 6, line 1, insert the following sentence after the period: "The water quality plan, or any amendment thereto, shall be effective upon recordation of the plan or the amendment, in the deed records, and shall apply during the period of review and approval by the commission or appeal of the denial of the plan or any amendment."

(4) On page 7, line 15, insert "surface" after "area of a" and before "lake".

(5) On page 7, line 15, insert "surface" after "or" and before "reservoir".

(6) On page 7, line 15, insert the following after "reservoir" and before the period: "that impounds at least 4,000 acre feet of water".

(7) On page 7, line 18, insert the following after "agreement" and before "between": "entered into after the effective date of this Act".

The amendments were read.

Senator Wentworth moved to concur in the House amendments to S.B. 1017.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Rosson.

HOUSE BILL 1359 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1359, Relating to road construction, repair, and maintenance in certain areas controlled by the Parks and Wildlife Department.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1359 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1359** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 785 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 785, Relating to the regulation of manufactured housing; providing penalties.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 785** as follows:

On page 24 of the Senate committee report, delete lines 8 through 12 and substitute the following:

"D. A fee of Twenty [Fifteen] Dollars (\$20) [(\$15) for each permit] shall be collected by the Texas [State] Department of [Highways and Public] Transportation. Thirty cents (\$0.30) shall be deposited to the credit of the state highway fund and the balance of each fee shall be [and] deposited in the Treasury of the State"

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Haywood, Leedom, and Rosson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 785 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 785** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Haywood, Leedom, Rosson.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Haywood, Leedom, and Rosson asked to be recorded as voting "Nay" on the final passage of the bill.

(Senator Truan in Chair)

(President in Chair)

HOUSE BILL 359 ON SECOND READING

Senator Moncrief asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 359, Relating to breast-feeding in public or private places, including worksites.

There was objection.

Senator Moncrief then moved to suspend the regular order of business and take up **H.B. 359** for consideration at this time.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Galloway, Nelson.

Absent: Barrientos.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Nelson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 359 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 359** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Galloway, Nelson.

Absent: Armbrister.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Nelson asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 1243 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1243, Relating to requirements for certain insurers and health maintenance organizations concerning financial solvency.

The bill was read second time.

Senator Sibley offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1243**, as engrossed, by inserting a new SECTION 18(c) of the bill (House engrossment printing, page 17, between lines 20 and 21) to read as follows:

(c) Article 21.49-8, Insurance Code, as added by this Act, takes effect only on certification by the commissioner of insurance that the National Association of Insurance Commissioners has provided to the commissioner in writing a total budgetary disclosure as to the use by that association of funds received by that association from states that are members of the association. The commissioner shall issue a finding regarding the certification, and shall publish the finding in the Texas Register.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1243 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1243** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1375 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1375, Relating to the punishment for the purchase, possession, or consumption of alcoholic beverages by a minor.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1375 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1375** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**MOTION TO PLACE
HOUSE BILL 2035 ON SECOND READING**

Senator Nelson asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 2035, Relating to suspension or revocation of a driver's license of a juvenile.

There was objection.

Senator Nelson then moved to suspend the regular order of business and take up **H.B. 2035** for consideration at this time.

The motion was lost by the following vote: Yeas 20, Nays 11. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Bivins, Brown, Cain, Galloway, Harris, Henderson, Leedom, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Wentworth, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Haywood, Lucio, Luna, Madla, Truan, Turner, West, Whitmire.

HOUSE BILL 1687 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1687, Relating to the notification of school personnel of the arrest or detention of a student.

The bill was read second time.

Senator Gallegos offered the following committee amendment to the bill:

Committee Amendment No. 1

In SECTION 1 of **H.B. 1687**, amend Article 15.27(A), Code of Criminal Procedure, after the word "student," and before the word "Within" (page 1, line 17), add the following language:

All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1687 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1687** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2129 ON SECOND READING**

On motion of Senator Patterson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2129, Relating to state, county, and municipal hotel occupancy taxes.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2129** as follows:

Amend SECTION 1, Sec. 156.001(2), by inserting between "owned and" the words or leased.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2129 ON THIRD READING**

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2129** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3049 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3049, Making appropriations for and directing payment of certain miscellaneous claims and judgments out of funds designated by this Act and requiring approval of the claims in the manner specified in this Act before payment is made.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3049** by striking all below the enacting clause and substituting the following:

SECTION 1. The following sums of money are appropriated out of the General Revenue Fund No. 001 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Steve D. Thompson Trucking for warrant voided by statute of limitations. \$6,368.40

To pay Steve D. Thompson Trucking for warrant voided by statute of limitations. \$8,471.70

To pay Lexton-Ancira, Inc., care of Southmark Corporation, for warrant voided by statute of limitations. \$2,063.70

To pay the Texas Natural Resource Conservation Commission for unpaid underground storage tank fees for the Texas Youth Commission. \$100.00

To pay Del Barker Stigler, M.D., for warrant voided by statute of limitations. \$1,700.86

To pay Prudential-Bache Money mart Assets, Inc., for warrant voided by statute of limitations. \$45,000.00

To pay Terminal Freight Handling Co., doing business as Sears Logistics, for warrant voided by statute of limitations. \$31,894.50

To pay Canon U.S.A., Inc., for outstanding invoices for copier maintenance and service for the Texas Department of Health. \$406.04

To pay Bruce G. Kinzy, M.D., P.A., for warrant voided by statute of limitations. \$162.00

To pay Amparos Apothecary for outstanding invoices for drug purchases for the Texas Department of Mental Health and Mental Retardation. \$4,210.45

To pay James D. Thompson for warrant voided by statute of limitations. \$1,022.73

To pay Cris Haines for warrant voided by statute of limitations. \$3.50

To pay Lucy M. Carlson for warrant voided by statute of limitations. \$87.93

To pay Annice M. Elliott for warrant voided by statute of limitations. \$369.41

To pay Willmar Distributors, Inc., care of Marriott Corporation, for warrant voided by statute of limitations. \$12,251.90

To pay Parkland Memorial Hospital, doing business as Dallas County Hospital District, for warrant voided by statute of limitations. \$58,585.64

To pay Masterson, Moreland, Sauer, Whisman, Inc., care of Moak Consulting, for outstanding invoices for expert witness fees for the Office of the Attorney General. \$51,500.00

To pay Fred C. Bunch for warrant voided by statute of limitations. \$792.53

To pay Robin D. Etie for warrant voided by statute of limitations.	\$40.07
To pay Mary Helen Gaines for warrant voided by statute of limitations.	\$80.77
To pay American Finance Group for warrant voided by statute of limitations.	\$782.00
To pay the City of Richmond for warrant voided by statute of limitations.	\$20,435.89
To pay Bill Long, District Clerk of Dallas County, for outstanding invoices for filing fees and court costs for the Office of the Attorney General.	\$355.00
To pay Jon C. Ford for warrant voided by statute of limitations.	\$2,831.04
To pay Virginia Pritz for warrant voided by statute of limitations.	\$457.47
To pay Live Oak Realty Company for warrant voided by statute of limitations.	\$3,580.80
To pay Northern Frost Investment Company for warrant voided by statute of limitations.	\$551.25
To pay Hicks Water Conditioning for warrant voided by statute of limitations.	\$187.50
To pay Mansfield Feed Mills, Inc., for warrant voided by statute of limitations.	\$250.00
To pay Marriott MHP Two Corporation for warrant voided by statute of limitations.	\$25,416.23
To pay Reddy Medical Association for unpaid workers' compensation benefits provided to Rosendo M. Garcia.	\$51.35
To pay Dan R. Hillard, M.D., for unpaid workers' compensation benefits provided to Margaret Stanberry.	\$475.00
To pay Orthopaedic and Back Pain Center for unpaid workers' compensation benefits provided to Julian Garcia.	\$2,075.95
To pay IBM Corporation for unpaid interest on computer system and software contract.	\$89,428.61
To pay Betty Jo Quash for warrant voided by statute of limitations.	\$53.76
To pay Mountain Creek Golf Club for warrants voided by statute of limitations.	\$91.69
To pay Comal County Juvenile Residential Supervision and Treatment Center, Inc., for warrant voided by statute of limitations.	\$5,040.00
To pay YMCA of Greater Houston for warrant voided by statute of limitations.	\$3,476.03
To pay Duke Salisbury, trustee for bankruptcy estate of Michigan General Corporation for Krestmark of Houston, Inc., for warrant voided by statute of limitations.	\$7,969.87
To pay Fraternal Order of Eagles Aerie 48 for warrant voided by statute of limitations.	\$1,900.00
To pay the Texas Natural Resource Conservation Commission for unpaid underground storage tank fees for the Texas Department of Mental Health and Mental Retardation.	\$75.00

To pay Melody Ensiz Carpenter for warrant voided by statute of limitations. \$395.59

To pay Jack V. Gardner for warrant voided by statute of limitations. \$2,645.70

To pay the Travis County District Clerk for outstanding invoices for court costs for the Office of the Attorney General. \$2,135.00

To pay Roy Widener for warrant voided by statute of limitations. \$12.00

To pay Samuel Ortegon for warrant voided by statute of limitations. \$136.25

To pay Sourjyebdra Dasgupta for warrant voided by statute of limitations. \$110.00

To pay the Travis County District Clerk for outstanding invoices for court costs for the Office of the Attorney General. \$135.00

To pay Victoria Lewis-Dunn for warrants voided by statute of limitations. \$240.88

To pay Les Arthur Eastwood for warrant voided by statute of limitations. \$1,136.78

To pay Cheshire and Associates, Inc., care of Frank I. Cheshire, for warrant voided by statute of limitations. \$45.00

To pay Janet Martin and her attorney, Julia R. Lavern, P.C., according to the terms of a judgment in the case of Janet Martin v. M.D. Anderson plus 10 percent interest per annum from June 6, 1994, until paid, to be computed by the comptroller. \$64,446.00

To pay Marilou Morrison and her attorney, Jerri Lynn Ward, for payment of a settlement including all accrued interest and attorney's fees, in the case of Nora Longoria et al v. Office of the Attorney General et al. \$31,608.61

To pay Nora Longoria and her attorney, Jerri Lynn Ward, for payment of a settlement, including all accrued interest and attorney's fees, in the case of Nora Longoria et al v. Office of the Attorney General et al. \$80,138.61

To pay John David Miller and his attorney, John Charles Fleming, according to the terms of a judgment in the case of John David Miller v. Texas Animal Health Commission plus 10 percent interest per annum from September 16, 1991, until paid, to be computed by the comptroller. \$170,126.71

To pay Tarleton State University as reimbursement for payment of a settlement in the case of Randy Rosiere v. Barry Thompson et al. \$200,000.00

To pay Thomas P. McDill, Jr., and his attorney, B. Craig Deats, according to the terms of a judgment in the case of Thomas P. McDill, Jr. v. Texas Natural Resource Conservation Commission, plus 10 percent interest per annum from December 1, 1994, until paid, to be computed by the comptroller. \$217,738.00

Notwithstanding anything in this Act to the contrary, this judgment may be paid when final from funds appropriated by this Act if the judgment is verified and substantiated by the administrator of the special fund or

account and approved by the attorney general and the comptroller not later than August 31, 1997.

To pay Barbara Carisalez according to the terms of a settlement, when final, in the case of Barbara Carisalez v. Texas Funeral Service Commission and Larry Farrow. \$25,000.00

The Texas Funeral Service Commission is authorized to spend an amount not to exceed \$60,000 out of funds appropriated to the commission in H.B. 1, 74th Legislature, Regular Session, 1995 (the General Appropriations Act), for the purpose of paying a settlement of a complaint filed by Barbara Carisalez under Chapter 21, Labor Code, or its predecessor statute, and a charge filed under Title VII of the Civil Rights Act of 1964 against the Texas Funeral Service Commission, notwithstanding any limitations contained in the General Appropriations Act on the amount of funds that may be spent for the purpose of paying a settlement or judgment. The expenditure of funds authorized by this provision is subject to the approval of the Office of the Attorney General as required in the provisions of Article IX of the General Appropriations Act relating to the payment of judgments and settlements. A settlement or conciliation agreement on which funds are paid constitutes a complete release by Barbara Carisalez of all claims and causes of action Barbara Carisalez may have, arising from facts alleged in the complaint or charge described by this section, against the State of Texas or any former or current employee or officer of the State of Texas.

SECTION 2. The following sums of money are appropriated out of Fund No. 006 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Alamo Title Company, agent for Alamo Title Insurance of Texas, for warrant voided by statute of limitations. \$436.00

To pay Victor E. Hudman, M.D., for unpaid medical services. \$45.00

To pay Harley E. Baker for warrant voided by statute of limitations. \$35.24

To pay Permian Basin Chiropractic for unpaid chiropractic services. \$3,830.00

To pay Upper Valley Radiology Clinic PA for unpaid radiological services. \$157.00

To pay Rehabilitation Associates of Odessa for unpaid physical rehabilitation services. \$150.00

To pay T. Brown Constructors, Inc., according to the terms of a judgment in the case of T. Brown Constructors, Inc. v. State Department of Highways and Public Transportation, Cause No. 93-77032, in the District Court, Travis County, 98th Judicial District. \$3,318,001.33

To pay the City of Grand Prairie for unpaid streetlight maintenance charges. \$104,829.58

SECTION 3. The following sums of money are appropriated out of Fund No. 099 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Canon U.S.A. for unpaid copier service. \$7,897.33

SECTION 4. The following sums of money are appropriated out of Fund No. 019 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Earnest Garman, Jr., for warrant voided by statute of limitations. \$7.00

SECTION 5. The following sums of money are appropriated out of Fund No. 026 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Michael L. Miller for warrant voided by statute of limitations. \$7.56

To pay Travis County District Clerk for outstanding invoices for court costs for the Texas Employment Commission. \$2,290.00

To pay Elaine G. Davis for warrant voided by statute of limitations. \$92.04

SECTION 6. The following sums of money are appropriated out of Fund No. 036 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Cyril Frost R. Frost and his attorney, Matthew Trevena, according to the terms of a judgment in the case of Cyril R. Frost v. Texas Commission on Fire Protection plus 10 percent interest per annum from April 7, 1994, until paid, to be computed by the comptroller. \$200,399.55

SECTION 7. The following sums of money are appropriated out of Fund No. 037 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Galveston County Child Welfare Board for unpaid foster care services. \$78,229.21

SECTION 8. The following sums of money are appropriated out of Fund No. 061 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay the Institute for Rehabilitation Research for outstanding invoices for medical services for various clients of the Texas Rehabilitation Commission. \$2,302.99

To pay TSO for outstanding invoices for eyeglasses for a client of the Texas Rehabilitation Commission. \$160.00

To pay the University of Houston for outstanding invoices for tuition for various Texas Rehabilitation Commission employees. \$11,632.40

To pay Georgetown Medical Center for outstanding invoices for medical services. \$390.00

SECTION 9. The following sums of money are appropriated out of Fund No. 064 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Fort Bend Telephone for unpaid telephone bill for Brazos Bend State Park. \$198.20

SECTION 10. The following sums of money are appropriated out of Fund No. 127 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Barbra Crane for warrant voided by statute of limitations. \$462.00

SECTION 11. The following sums of money are appropriated out of Fund No. 141 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Rodney J. Puryear for warrant voided by statute of limitations.
\$150.00

SECTION 12. The following sums of money are appropriated out of Fund No. 165 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay the Ben Hogan Company and its attorney, Matthew P. McDonald, accrued interest on the principal amount of a judgment previously paid by the state in the case of Ben Hogan v. Texas Employment Commission.
\$39,162.00

SECTION 13. The following sums of money are appropriated out of Fund No. 166 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Peoplecare Heritage Oaks, Inc., for unpaid charges for nursing home care for Medicaid recipients.
\$420.80

To pay Brownsville Good Samaritan Center for unpaid charges for nursing home care for Medicaid recipients.
\$845.80

To pay L & L Equities, Inc., doing business as All Seasons Nursing Center, for unpaid charges for nursing home care for Medicaid recipients.
\$341.01

To pay David W. Nesbit, doing business as Nesbit Nursing Home, for unpaid charges for nursing home care for Medicaid recipients.
\$70.88

To pay Rockwall Nursing Care Center for unpaid charges for nursing home care for Medicaid recipients.
\$1,538.31

To pay Peoplecare Heritage Oaks, Inc., for unpaid charges for nursing home care for Medicaid recipients.
\$684.42

To pay Southwestern Medical Centers, Inc., doing business as Deer Creek Nursing Center, for unpaid charges for nursing home care for Medicaid recipients.
\$570.36

To pay 3927 Foundation, Inc., doing business as Bryan Manor, for unpaid charges for nursing home care for Medicaid recipients.
\$924.00

To pay Quality Care of Waco for unpaid charges for nursing home care for Medicaid recipients.
\$28.62

To pay White Acres Good Samaritan Retirement Village for unpaid charges for nursing home care for Medicaid recipients.
\$2,585.25

To pay Honorcare Operating Co., doing business as Angelina Nursing Home, for unpaid charges for nursing home care for Medicaid recipients.
\$870.98

To pay Tutor Nursing Home, Inc., for unpaid charges for nursing home care for Medicaid recipients.
\$910.50

To pay Bethphage Mission South, Inc., doing business as Bethphage at Winding Hollow, for unpaid charges for nursing home care for Medicaid recipients.
\$615.10

To pay Vari Care, Inc., doing business as Edgewater Care Center, for unpaid charges for nursing home care for Medicaid recipients. \$2,052.33

To pay Southwest Care Center for unpaid charges for nursing home care for Medicaid recipients. \$354.20

To pay Four Seasons Nursing Centers, Inc., doing business as Four Seasons Nursing Center-Austin, for unpaid charges for nursing home care for Medicaid recipients. \$2,107.99

To pay Paula A. Prince for warrant voided by statute of limitations. \$128.36

To pay Unicare Homes, Inc., doing business as Convalescent Center, for unpaid charges for nursing home care for Medicaid recipients. \$1,868.24

To pay Wright Nursing Home, Inc., for unpaid charges for nursing home care for Medicaid recipients. \$6,358.98

To pay Living Centers of America, doing business as Care, Inc., of Waco, for unpaid charges for nursing home care for Medicaid recipients. \$37,100.50

To pay Granbury Nursing Home, Inc., doing business as Granbury Care Center, for unpaid charges for nursing home care for Medicaid recipients. \$724.50

To pay Colonial Manor for unpaid charges for nursing home care for Medicaid recipients. \$114.90

To pay Advanced Living Technologies, Inc., doing business as Floresville, for unpaid charges for nursing home care for Medicaid recipients. \$35.21

To pay Mason Management Company for unpaid charges for nursing home care for Medicaid recipients. \$859.85

To pay Leon Valley Lodge for unpaid charges for nursing home care for Medicaid recipients. \$379.36

To pay Mission Nursing Home for unpaid charges for nursing home care for Medicaid recipients. \$1,163.52

To pay Valley View Care Center for unpaid charges for nursing home care for Medicaid recipients. \$364.30

To pay St. David's Rehabilitation Center for unpaid charges for nursing home care for Medicaid recipients. \$14,590.21

To pay Vari Care, Inc., doing business as Edgewater Care Center, for unpaid charges for nursing home care for Medicaid recipients. \$1,560.28

To pay Josephine Godoy for warrant voided by statute of limitations. \$10.00

To pay Quality Care of Waco for unpaid charges for nursing home care for Medicaid recipients. \$396.91

To pay Dallas County Hospital District, doing business as Parkland Memorial Hospital, for warrant voided by statute of limitations. \$16,239.93

To pay Silsbee Convalescent Center for unpaid charges for nursing home care for Medicaid recipients. \$254.92

To pay Briarcliff Village Health Center for unpaid charges for nursing home care for Medicaid recipients. \$1,816.28

To pay Spectrum Nursing Homes of Texas, doing business as Alamo Heights Manor, for unpaid charges for nursing home care for Medicaid recipients. \$434.81

To pay Alvin Convalescent Center for unpaid charges for nursing home care for Medicaid recipients. \$172.13

To pay Harlingen Good Samaritan Center for unpaid charges for nursing home care for Medicaid recipients. \$4,092.32

To pay Mason Management Company, doing business as Village Care Center, for unpaid charges for nursing home care for Medicaid recipients. \$2,440.83

To pay Southwest Care Center for unpaid charges for nursing home care for Medicaid recipients. \$80.91

To pay David Gregg Johns, doing business as Pecos Nursing Home, for unpaid charges for nursing home care for Medicaid recipients. \$71.24

To pay Four Seasons Nursing Center for unpaid charges for nursing home care for Medicaid recipients. \$1,202.90

To pay the Texas Department of Mental Health and Mental Retardation for unpaid administrative services under Title XIX, federal Social Security Act. \$1,114,592.00

To pay The Evangelical Lutheran Good Samaritan Society, doing business as McAllen Good Samaritan Center, for unpaid charges for nursing home care for Medicaid recipients. \$2,296.84

To pay Brentwood Place Two for unpaid charges for nursing home care for Medicaid recipients. \$409.50

To pay Convalescent Management, Inc., doing business as Parkview Convalescent Center, for unpaid charges for nursing home care for Medicaid recipients. \$780.91

To pay Lutheran Home of West Texas for unpaid charges for nursing home care for Medicaid recipients. \$3,217.64

To pay Twin Pines Nursing Home for unpaid charges for nursing home care for Medicaid recipients. \$923.21

To pay Avante Villa at Corpus Christi for unpaid charges for nursing home care for Medicaid recipients. \$840.42

To pay the United States Internal Revenue Service, Financial Operations Division, for unpaid charges for services rendered by the Internal Revenue Service. \$47,659.77

To pay Western Manor for unpaid charges for nursing home care for Medicaid recipients. \$774.08

To pay Greentree Health Center, Inc., for unpaid charges for nursing home care for Medicaid recipients. \$2,398.41

To pay 3927 Foundation, doing business as Del Mar Health Care Center, for unpaid charges for nursing home care for Medicaid recipients. \$914.95

To pay Brentwood Place Three for unpaid charges for nursing home care for Medicaid recipients. \$19,370.93

To pay Dallas County MHMR Center for unpaid charges for nursing home care for Medicaid recipients. \$3,985.98

To pay Cleburne Health Care Center for unpaid charges for nursing home care for Medicaid recipients. \$1,559.58

To pay Eckerd Drugs No. 818 for unpaid charges for warrant voided by statute of limitations. \$2,339.01

To pay Beverly Enterprises for unpaid charges for nursing home care for Medicaid recipients. \$81,933.75

To pay Texas Health Enterprises for unpaid charges for nursing home care for Medicaid recipients. \$217,374.93

To pay Sierra Health Center for unpaid charges for nursing home care for Medicaid recipients. \$203.84

To pay Heartland of Corpus Christi No. 5224 for unpaid charges for nursing home care for Medicaid recipients. \$639.98

To pay Health Center Monte Vista-CRDO for unpaid charges for nursing home care for Medicaid recipients. \$3,517.62

To pay Opal Mennella, doing business as Sweetbriar Nursing Home, for unpaid charges for nursing home care for Medicaid recipients. \$889.08

To pay Olsen Manor Nursing Home for unpaid charges for nursing home care for Medicaid recipients. \$15.52

To pay Peoplecare Heritage Oaks for unpaid charges for nursing home care for Medicaid recipients. \$991.17

To pay Floydada Nursing Home for unpaid charges for nursing home care for Medicaid recipients. \$1,804.44

To pay Estate of Sam Hardy, doing business as Calvert Nursing Center, for unpaid charges for nursing home care for Medicaid recipients. \$37,208.75

To pay Angela L. Rodriguez for warrant voided by statute of limitations. \$128.69

To pay HEB Nursing Center for warrant voided by statute of limitations. \$57,813.16

To pay Convalescent Management, Inc., doing business as Cherry Street Manor, for unpaid charges for nursing home care for Medicaid recipients. \$1,186.65

To pay James F. Cotter, doing business as Shady Oaks Manor, for warrant voided by statute of limitations. \$11,692.66

To pay Memorial Hospital and Medical Center of Midland for unpaid charges for nursing home care for Medicaid recipients. \$2,457.70

To pay the District Attorney for the 38th Judicial District for unpaid attorney fees in food stamp fraud cases. \$2,497.50

To pay Golden Age Manor-Bellfort for unpaid charges for nursing home care for Medicaid recipients. \$665.28

To pay Beneva Nyamu for warrant voided by statute of limitations. \$10.31

To pay George Green for payment of a settlement, including attorney's fees, in the case of George Green v. Department of Human Services plus 10 percent interest per annum from October 10, 1991, until paid, to be computed by the comptroller. \$3,614,831.87

Acceptance of this amount by George Green constitutes a complete release by George Green of all claims and causes of action George Green may have against the State of Texas arising from the case of George Green v. Department of Human Services.

To pay Texas Health Enterprises, Inc., doing business as Eastern Hills, according to the terms of a judgment in the case of Texas Health Enterprises, Inc., d/b/a Eastern Hills v. Department of Human Services.

\$42,136.32

To pay Elizabeth Barrious and her attorney, James Herrmann, according to the terms of a judgment in the case of Elizabeth Barrious v. Department of Human Services plus 10 percent interest per annum from May 19, 1993, until paid, to be computed by the comptroller.

\$36,729.45

SECTION 14. The following sums of money are appropriated out of Fund No. 167 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Katherine Ann Smith for warrant voided by statute of limitations.

\$158.00

To pay Joyce Marie Somerville for accrued AFDC benefits.

\$4,492.00

To pay Janice M. Gafford for warrant voided by statute of limitations.

\$144.00

SECTION 15. The following sums of money are appropriated out of Fund No. 224 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay the University of Houston for outstanding claims for reimbursement under enhanced oil recovery ("Annex") grants made through the governor's office.

\$15,361.55

To pay the University of Houston for outstanding claims for reimbursement under enhanced oil recovery ("Annex") grants made through the governor's office.

\$12,773.53

To pay The University of Texas at Austin for outstanding claims for reimbursement under enhanced oil recovery ("Annex") grants made through the governor's office.

\$7,865.79

To pay The University of Texas at Austin for outstanding claims for reimbursement under enhanced oil recovery ("Annex") grants made through the governor's office.

\$762.02

To pay the Texas Engineering Experiment Station for outstanding claims for reimbursement under enhanced oil recovery ("Annex") grants made through the governor's office.

\$65,937.47

SECTION 16. The following sums of money are appropriated out of Fund No. 237 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Robert Hawkins for warrant voided by statute of limitations.

\$91.60

SECTION 17. The following sums of money are appropriated out of Fund No. 274 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Gary W. Harvey/Total Radiator and Automotive for warrant voided by statute of limitations.

\$118.25

To pay Resler Chevron, care of Jeffery J. Charles, for warrant voided by statute of limitations. \$649.00

SECTION 18. The following sums of money are appropriated out of Fund No. 342 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay S-3, Inc., doing business as Drug-Sav Discount Drug Store, for unpaid charges for pharmaceutical services for Medicaid recipients.

\$15,813.57

To pay National Heritage Insurance Company for unpaid charges for medical assistance for Medicaid recipients. \$95,819.64

SECTION 19. The following sums of money are appropriated out of Fund No. 551 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Chris J. Bailey for warrant voided by statute of limitations.

\$1,824.55

To pay Paula Maria Yanez for warrant voided by statute of limitations.

\$2,870.40

SECTION 20. The following sums of money are appropriated out of Fund No. 937 for payment of itemized claims and judgments plus interest, if any, against the State of Texas:

To pay Ralph Duvall for warrant voided by statute of limitations.

\$896.00

SECTION 21. Appropriations made by this Act out of funds subject to consolidation into the general revenue fund pursuant to Section 403.094, Government Code, are considered to be appropriations out of the general revenue fund or out of the successor account, as applicable.

SECTION 22. It is specifically provided that before any claim or judgment may be paid from funds appropriated by this Act, the claim or judgment must be verified and substantiated by the administrator of the special fund or account against which the claim is to be charged and have the approval of the attorney general and the comptroller of public accounts. Any claim or judgment itemized in this Act that has not been verified and substantiated by the administrator of the special fund or account and approved by the attorney general and the comptroller of public accounts by August 31, 1996, may not be paid from funds appropriated. Each claim must contain such information as may be required by the comptroller but at a minimum must contain the specific reason for the claim. If the claim is for a void warrant, the claim must include a specific identification of the goods, services, refund, or other item for which the warrant was originally issued. In addition, it must include a certification by the original payee or the original payee's successor, heirs, or assigns that the debt is still outstanding. If the claim is for unpaid goods or services, it must be accompanied by an invoice or other acceptable documentation of the unpaid account and any other information that may be required by the comptroller.

SECTION 23. Subject to the conditions and restrictions in this Act and provisions stated in the judgments, the comptroller is authorized and directed to issue one or more warrants on the state treasury, as soon as

possible following the effective date of this Act, in the favor of each of the persons, firms, or corporations named in this Act, in an amount not to exceed the amount set opposite their respective names and shall mail or deliver to each of the persons, firms, or corporations one or more warrants in payment of all claims included in this Act.

SECTION 24. This Act takes effect September 1, 1995.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Montford offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **C.S.H.B. 3049** as follows:

(1) On page 3, delete lines 59-63 and substitute in its place the following:

Contingent on the conclusion of State Department of Transportation v. T. Brown Constructors, Inc., Cause No. 95-00469 or other proceeding challenging the judgment entered in Cause No. 93-77032, to pay T. Brown Constructors, Inc., according to the terms of the judgment in the case of T. Brown Constructors, Inc., v. State Department of Highways and Public Transportation, Cause No. 93-77032, in the District Court, Travis County, 98th Judicial District, plus interest from the date of the judgment until paid as provided by law, to be calculated by the comptroller. \$3,318,001.33

Should the judgment in Cause No. 93-77032 be set aside or otherwise reformed, the above listed payment shall not be made as set forth above.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended failed of adoption by the following vote: Yeas 8, Nays 22.

Yeas: Galloway, Haywood, Leedom, Nelson, Nixon, Ratliff, Sibley, Sims.

Nays: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Harris, Lucio, Luna, Madla, Moncrief, Montford, Patterson, Rosson, Shapiro, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Absent: Henderson.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 3049** as follows:

(1) On page 3, delete lines 59-63 and substitute in its place the following:

Contingent on the conclusion of State Department of Transportation v. T. Brown Constructors, Inc., Cause No. 95-00469 or other proceeding challenging the judgment entered in Cause No. 93-77032, to pay T. Brown Constructors, Inc., according to the terms of the judgment in the case of T. Brown Constructors, Inc., v. State Department of Highways and Public Transportation, Cause No. 93-77032, in the District Court, Travis County, 98th Judicial District, plus interest from the date of the judgment until paid as provided by law, to be calculated by the comptroller. \$3,318,001.33

Should the judgment in Cause No. 93-77032 be set aside or otherwise reformed, the above listed payment shall not be made as set forth above.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3049 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 3049** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

GUEST PRESENTED

The President introduced to the Senate George Green, who was seated in the gallery.

The Senate welcomed Mr. Green.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 74, Relating to the authority of a county to regulate dangerous structures; providing a penalty. (As amended)

S.B. 89, Relating to the terms served by members of the executive committee of the Office for the Prevention of Developmental Disabilities.

S.B. 123, Relating to the issuance of specially designed license plates for certain military personnel and veterans.

S.B. 131, Relating to the duties of the Department of Protective and Regulatory Services regarding domestic violence.

S.B. 224, Relating to reports of domestic violence.

S.B. 225, Relating to requiring law enforcement officers to receive training in documentation techniques for certain cases.

S.B. 390, Relating to the disclosure of property valuation information to the owner of property to be acquired for public use. (As amended)

S.B. 452, Relating to powers and duties of the Texas Ethics Commission, to powers and duties of persons acting under certain laws administered by the commission, and to the registration of persons who represent inmates for compensation. (As substituted)

S.B. 496, Relating to the contribution of vacation leave time by certain county employees to a county sick leave pool. (As substituted)

S.B. 519, Relating to peer assistance and reporting programs for students enrolled in certain professional educational programs.

S.B. 525, Relating to the purchase of agricultural products by a public institution of higher education.

S.B. 527, Relating to conditions of employment for certain officers of the state or a political subdivision of the state. (As substituted)

S.B. 538, Relating to the right of a holder or employee of a holder of an alcoholic beverage license or permit to possess a firearm on the licensed or permitted premises.

S.B. 553, Relating to a discount on motor vehicle insurance premiums for certain students based on academic achievement. (As amended)

S.B. 585, Relating to assistance by certain public institutions of higher education relating to admissions, financial aid, and testing.

S.B. 595, Relating to the authority of counties to abate a public nuisance on certain property and assess costs of abatement. (As amended)

S.B. 634, Relating to the regulation of real estate appraisers.

S.B. 636, Relating to a suit filed seeking to withhold information requested under the open records law and to the parties to the suit.

S.B. 676, Relating to the prosecution for theft of certain pesticides.

S.B. 698, Relating to the statute of limitations for the offense of securing execution of a document by deception.

S.B. 752, Relating to regulation of businesses conducting currency exchange, transportation, or transmission; creating offenses and providing penalties. (As amended)

S.B. 783, Relating to the right of a person leasing property to administrative and judicial review of a determination of the appraised value of the property for ad valorem taxation. (As amended)

S.B. 805, Relating to exempting certain youth camps from child-care licensing requirements. (As amended)

S.B. 871, Relating to the appeal of orders of and civil penalties assessed by the Consumer Credit Commissioner.

S.B. 886, Relating to certain procedures for the handling of a case in a justice or municipal court. (As substituted)

S.B. 896, Relating to a vehicle left unattended on a controlled access highway. (As amended)

S.B. 913, Relating to retaliation against a resident of a nursing home or related institution for reports of abuse or neglect. (As amended)

S.B. 918, Relating to the appeal from a justice or municipal court in a criminal case.

S.B. 919, Relating to reporting of stolen vehicles.

S.B. 944, Relating to an exemption from certain testing and remedial coursework for a student with dyslexia or a related disorder who enters a public institution of higher education.

S.B. 1020, Relating to the transfer of certain programs from the governor's office.

S.B. 1044, Relating to elevator inspections; providing penalties. (As amended)

S.B. 1046, Relating to the electronic availability of the Texas Administrative Code.

S.B. 1058, Relating to the authority of the Texas Department of Transportation to procure certain services by competitive sealed proposal. (As amended)

S.B. 1076, Relating to the powers of the Lower Colorado River Authority in Lampasas County.

S.B. 1092, Relating to the treatment for tax purposes of property held and used for a public purpose under an interlocal contract between political subdivisions.

S.B. 1128, Relating to the deposit, investment, safekeeping, and records and reports of, and collateral requirements for the deposit of, funds held by the state treasurer. (As substituted)

S.B. 1175, Relating to advocates for survivors of sexual assault and to confidential communications; providing a criminal penalty.

S.B. 1177, Relating to filings made with the secretary of state by public safety organizations, public safety publications, and certain independent promoters.

S.B. 1178, Relating to the regulation of athlete agents and providing for the issuance of subpoenas and other process in investigations by the secretary of state.

S.B. 1179, Relating to veterans organizations filing with the secretary of state.

S.B. 1182, Relating to certain reports filed with the Office of the Secretary of State.

S.B. 1197, Relating to a special judge serving a county court.

S.B. 1217, Relating to notification of certain interest holders and owners of seized contraband in forfeiture proceedings; providing that asset forfeiture is remedial in nature rather than punitive.

S.B. 1222, Relating to the payment of interest to designated beneficiaries.

S.B. 1252, Relating to information to be provided on application for original, renewal, or duplicate driver's licenses and personal identification cards; requiring all license applicants, including applicants younger than 17 years of age, to provide fingerprints and other required information.

S.B. 1276, Relating to the creation and administration of the Crime Victims' Institute and advisory council and the Crime Victims' Institute account.

S.B. 1301, Relating to physician licensing, including the notice and late fee requirements for the annual registration of physician licenses, the temporary licensure of certain out-of-state physicians, and the licensure of certain international medical graduates.

S.B. 1314, Relating to the regulation and licensing of wholesale motor vehicle auctions.

S.B. 1337, Relating to policies and procedures of the Commission on Law Enforcement Officer Standards and Education, including the appointing and licensing of officers and continuing education training requirements; providing a penalty.

S.B. 1338, Relating to the administration of the judicial and court personnel training fund.

S.B. 1363, Relating to required protective headgear for motorcycle operators and passengers.

S.B. 1396, Relating to altering the annexation status of land in certain municipal utility districts and authorizing the collection of municipal sales taxes in the districts. (As amended)

S.B. 1397, Relating to the release of extraterritorial jurisdiction over a tract of land by certain municipalities and the inclusion of that tract in the extraterritorial jurisdiction of another municipality.

S.B. 1407, Relating to contractual arrangements among health maintenance organizations, physicians, and other providers. (As amended)

S.B. 1435, Relating to joint ownership of a motor vehicle by spouses with rights of survivorship.

S.B. 1437, Relating to the county registration of dogs.

S.B. 1439, Relating to the nonsubstantive codification of provisions relating to arbitration. (As substituted)

S.B. 1502, Relating to the regulation of the practice of cosmetology. (As amended)

S.B. 1514, Relating to the inclusion of the services of licensed psychological associates in health insurance coverage.

S.B. 1535, Relating to allowance of prior service credit in a retirement plan for certain police officers.

S.B. 1549, Relating to revenue obligations of junior college districts or regional college districts.

S.B. 1554, Relating to the eligibility for training and certification as a medication aide.

S.B. 1601, Relating to the creation, administration, powers, and duties of the Westchase Area Management District; granting the authority to issue bonds; authorizing a tax.

S.B. 1619, Relating to the authority of the Texas Natural Resource Conservation Commission to enter property, remediate certain conditions related to hazardous substances, and recover costs associated with remediation, to the authority of commission contractors to enter property, and to the liability of certain contractors who sign a waste manifest. (As amended)

S.B. 1632, Relating to the sale and exchange of lands by certain navigation districts.

S.B. 1646, Relating to the ability of a public housing authority to sponsor a public facility corporation. (As amended)

S.B. 1647, Relating to the governance of the Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1.

S.B. 1657, Relating to the boundaries of the Upper Trinity Regional Water District, to weighted voting by contracting entities, and to the validation of certain actions of the district.

S.B. 1670, Relating to the regulation of certain amateur boxing events.

S.B. 1681, Relating to authorizing the Texas National Research Laboratory Commission to contract with a special utility district.

S.B. 1691, Relating to the conveyance of certain real property by the Austin Independent School District to the Austin Community College District.

S.B. 1694, Relating to the administration, powers, and duties of the Greater Greenspoint Management District of Harris County and political subdivisions contracting with the district, including the powers to issue bonds and levy taxes.

S.B. 1695, Relating to emergency management.

S.B. 1701, Relating to the designation of State Highway 190 in Dallas, Collin, and Denton counties as the President George Bush Highway.

S.B. 1705, Relating to the creation of an emergency services district and simultaneous dissolution of a rural fire prevention district.

S.B. 1709, Relating to the validation of certain acts of, including the exclusion of land from, the El Paso County Water Authority.

S.B. 1714, Relating to the creation, administration, powers, duties, operation, and financing of the Oldham County Underground Water Conservation District.

S.B. 1720, Relating to the county courts at law of Nueces County.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

(Senator Madla in Chair)

HOUSE BILL 3073 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3073, Relating to the power of the courts of appeals to issue writs of mandamus.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 3073** as follows:

By adding SECTIONS 3 and 4 to read as follows and renumbering the subsequent SECTIONS appropriately:

SECTION 3. Article 52.01, Code of Criminal Procedure is amended by amending subsections (a) and (b), and by adding subsection (e) to read as follows:

(a) When a judge of any district court of this state, acting in his capacity as magistrate, has probable ~~[good]~~ cause to believe that an offense has been committed against the laws of this state, he may request that the presiding judge of the administrative judicial district appoint a district judge to commence a Court of Inquiry. The judge, who shall be appointed in accordance with subsection (b), may summon and examine any witness in relation to the offense ~~[thereto]~~ in accordance with the rules hereinafter provided, which procedure is defined as a "Court of Inquiry".

(b) Before requesting the presiding judge to appoint a district judge to commence ~~[calling]~~ a Court of Inquiry, a judge must:

~~[(1)]~~ enter into the minutes of his court a sworn affidavit stating the substantial facts ~~[good cause]~~ establishing probable cause ~~[his belief]~~ that a specific ~~[an]~~ offense has been committed against the laws of this state ~~[; and]~~.

(2) After the affidavit has been entered into the minutes of his court and a copy filed with the district clerk, the judge shall request the presiding judge of the administrative judicial district in which the affidavit is filed to appoint a judge to commence the Court of Inquiry. The judge appointed to commence the Court of Inquiry shall issue a written order commencing the Court of Inquiry and stating its scope. The presiding

~~judge shall not name the judge who requests the Court of Inquiry to preside over the Court of Inquiry. [no later than 10 days prior to the commencement of the Court of Inquiry, file with the district clerk a copy of the sworn affidavit and a written order calling the Court of Inquiry.]~~

~~(e) If more than one Court of Inquiry is commenced which pertains to the activities of a state governmental entity or public servant thereof, then, upon motion of the state governmental entity or public servant, made to the presiding judge or judges of the administrative judicial region or regions where the Courts of Inquiry have been commenced, the presiding judge or judges shall transfer the Courts of Inquiry to the presiding administrative judge of Travis County. The presiding administrative judge of Travis County shall consolidate the Courts of Inquiry for further proceedings and shall assign a district judge to preside over the consolidated Courts of Inquiry.~~

SECTION 4. The change in law made by SECTION 3 of this act shall only apply to a Court of Inquiry commenced on or after the effective date of this act. Existing law shall apply to any Court of Inquiry convened before the effective date of this act and the law is continued in effect for that purpose.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Montford and Rosson asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 3073 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 3073** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Montford.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 76 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 76, Relating to the release of certain medical records of missing persons.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 76 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 76** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(President in Chair)

HOUSE BILL 466 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 466, Relating to the compilation and use of information pertaining to criminal combinations; providing a penalty.

The bill was read second time.

Senator Cain offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 466** as follows:

On page 1, line 20, after "Article 60.01" and before the period add the following:

"and also means a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order"

The committee amendment was read and was adopted by a viva voce vote.

Senator Cain offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 466** as follows:

On page 1, line 14 add "photograph," after "material".

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 466 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 466** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 325 ON SECOND READING

On motion of Senator Galloway and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 325, Relating to requiring public notice of an application for an authorization to store certain radioactive waste.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 325** as follows:

1) On page 1, line 17, between "waste" and "under," insert "or mixed waste".

2) Amend Section 1. of **H.B. 325** by adding new subsection (d) of Section 401.154, Health and Safety Code, to read as follows:

(d) In this chapter, "mixed waste" means a combination of hazardous waste as that term is defined by Section 361.003 and radioactive material as that term is defined by Section 401.003.

3) Amend Section 1 of **H.B. 325** by adding new Section 401.155, Health and Safety Code, to read as follows:

Sec. 401.155. NOTICE OF APPLICATION FOR MIXED WASTE LICENSE. (a) The board and the Texas Natural Resource Conservation Commission by rule shall require an applicant for authorization under the agency's jurisdiction to store, process or dispose of mixed waste to comply with the notice requirements of Chapter 361 of the Health and Safety Code for hazardous waste permits and Section 401.154.

(b) Before issuing a license for a mixed waste disposal facility, the Texas Natural Resource Conservation Commission by order must find that the notice requirements of this section have been complied with and that the applicant is a private entity which holds a permit to operate a commercial hazardous waste landfill in a county that has:

(1) a population of less than 25,000 and,

(2) an average annual rainfall of less than 18 inches per year.

4) Amend **H.B. 325** by adding new Section 3 to read as follows and renumbering subsequent sections accordingly:

SECTION 3. Sec. 401.003(18), Health and Safety Code, is amended to read as follows:

(18) "Radioactive waste" means radioactive material, other than by-product material defined by Subdivision (3)(B), uranium ore, naturally occurring radioactive material waste, mixed waste or oil and gas naturally occurring radioactive material waste that:

(A) is discarded or unwanted and is not exempt by department rule adopted under Section 401.106 of this chapter; or

(B) would require processing before it could have a beneficial reuse.

5) Amend Section 4 of **H.B. 325** by adding new Subsection (c) to read as follows:

(c) Section 3 of this Act takes immediate effect.

The amendment was read and was adopted by the following vote: Yeas 25, Nays 3.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Moncrief, Truan, West.

Absent: Barrientos, Henderson, Turner.

VOTE RECONSIDERED

On motion of Senator Bivins and by unanimous consent, the vote by which Floor Amendment No. 1 was adopted was reconsidered.

Question—Shall Floor Amendment No. 1 to **H.B. 325** be adopted?

Senator Bivins offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **H.B. 325**, Item No. 3, as follows:

3) Amend Section 1 of **H.B. 325** by adding new Section 401.155, Health and Safety Code, to read as follows:

Sec. 401.155 NOTICE OF APPLICATION FOR MIXED WASTE LICENSE. The board and the Texas Natural Resource Conservation Commission by rule shall require an applicant for authorization under the agency's jurisdiction to store, process or dispose of mixed waste to comply with the notice requirements of Chapter 361 of the Health and Safety Code for hazardous waste permits and Section 401.154.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 325 ON THIRD READING

Senator Galloway moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 325** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Moncrief, Truan.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Truan asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 2781** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2313** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 200** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 73** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2069** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2168** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2042** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1964** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1785** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1551** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1200** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 3072** by a record vote of 141 Ayes, 0 Nays, and 2 Present-not voting.

The House refused to concur in Senate amendments to **H.B. 3235** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Hightower, Chair; Pitts, Alexander, Thompson, and Gallego.

The House refused to concur in Senate amendments to **H.B. 546** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Brimer, Chair; Crabb, Corte, King, and Yost.

The House refused to concur in Senate amendments to **H.B. 418** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Goodman, Chair; Cook, Brady, Van de Putte, and H. Cuellar.

The House refused to concur in Senate amendments to **H.B. 752** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Rhodes, Chair; Edwards, McCoulskey, Driver, and Oakley.

The House refused to concur in Senate amendments to **H.B. 814** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Coleman, Chair; Maxey, Dukes, Rusling, and Howard.

The House granted the request of the Senate for the appointment of a conference committee on **S.B. 1445**. The House conferees are: Representatives Siebert, Chair; Alexander, Craddick, Howard, Hochberg.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 992**. The House conferees are: Representatives Dukes, Chair; Combs, Hamric, Tillery, and Mowery.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 840**. The House conferees are: Representatives De La Garza, Chair; Place, Solis, West, and Brady.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 646**. The House conferees are: Representatives R. Cuellar, Chair; Willis, De La Garza, Duncan, and Haggerty.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 550**. The House conferees are: Representatives Holzheuser, Chair; Ogden, Torres, Marchant, and Ramsay.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 261**. The House conferees are: Representatives Reyna, Chair; Hill, Tillery, Bailey, and Davila.

The House has adopted the Conference Committee Report on **S.B. 9** by a non-record vote.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE BILL 2793 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2793, Relating to the regulation of insurance holding companies.

The bill was read second time and was passed to third reading by a viva voce vote.

(Senator Lucio in Chair)

HOUSE BILL 2793 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2793** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

MOTION TO PLACE

HOUSE BILL 2843 ON SECOND READING

Senator Brown asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 2843, Relating to the adoption of rules by the Texas Natural Resource Conservation Commission.

There was objection.

Senator Brown then moved to suspend the regular order of business and take up **H.B. 2843** for consideration at this time.

The motion was lost by the following vote: Yeas 16, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Bivins, Brown, Galloway, Harris, Haywood, Leedom, Lucio, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sims, Wentworth.

Nays: Barrientos, Cain, Ellis, Gallegos, Madla, Moncrief, Rosson, Sibley, Truan, Turner, West, Whitmire, Zaffirini.

Absent: Henderson, Luna.

**COMMITTEE SUBSTITUTE
HOUSE BILL 632 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 632, Relating to the expenditure of public funds for certain playground facilities.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 632 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 632** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 883 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 883, Relating to the regulation of certain nursing practices.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 883 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 883** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 960 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 960, Relating to authorizing counties to sell county-developed computer software.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 960 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 960** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1065 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1065, Relating to the practice of property tax consulting.

The bill was read second time.

Senator Sibley offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1065** (as engrossed) in SECTION 2 on page 2, line 26, after "Statutes" and before the "." by adding the following: "providing property tax consultant services in connection with single-family residences".

The committee amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Haywood asked to be recorded as "Present-not voting" on the adoption of Committee Amendment No. 1.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Haywood asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 1065 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1065** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Haywood.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Haywood asked to be recorded as "Present-not voting" on the final passage of the bill.

HOUSE BILL 1323 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1323, Relating to the employment of children; providing a criminal penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1323 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1323** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE**HOUSE BILL 1379 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1379, Relating to the registration, release, and supervision of sexual offenders.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE**HOUSE BILL 1379 ON THIRD READING**

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1379** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1180 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1180, Relating to providing employment services and other information to persons formerly sentenced to the institutional division or the state jail division of the Texas Department of Criminal Justice.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1180 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1180** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2289 ON SECOND READING

On motion of Senator Haywood and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2289, Relating to the representation of certain indigent persons by public defenders in Wichita County.

The bill was read second time.

Senator Haywood offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2289** by striking Section 1 and replacing it with the following:

SECTION 1. Article 26.043(g), Code of Criminal Procedure, is amended to read as follows:

(g) The public defender or an assistant public defender

(1) shall represent each indigent person in Wichita County who is:

(A) charged with a criminal offense in the county; or
[Wichita County and]

(B) a [each indigent] minor who is a party to a juvenile delinquency proceeding in the county; and

(2) may represent each indigent person in Wichita County who is entitled to representation under:

(A) Chapter 462, Health and Safety Code;

(B) Subtitle C, Title 7, Health and Safety Code; or

(C) Subtitle D, Title 7, Health and Safety Code.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2289 ON THIRD READING

Senator Haywood moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2289** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1441 ON SECOND READING

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1441, Relating to the financing of alternative fuels projects by the Texas Public Finance Authority on behalf of state agencies and certain political subdivisions of the state.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Montford asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 1441 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1441** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Present-not voting: Moncrief, Montford.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 2. (Same as previous roll call)

HOUSE BILL 1472 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1472, Relating to certain insurance coverage available through the Texas Automobile Insurance Plan Association.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1472 ON THIRD READING

Senator Leedom moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1472** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1483 ON SECOND READING**

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1483, Relating to the regulation of certain practices by funeral directors, embalmers, and mortuary schools.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1483 ON THIRD READING**

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1483** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2377 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2377, Relating to the provision and administration of mental health and mental retardation services.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2377 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2377** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(Senator Truan in Chair)

**MOTION TO PLACE
HOUSE BILL 1900 ON SECOND READING**

Senator Gallegos asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1900, Relating to routine purchases and contracts made by a port commission.

There was objection.

Senator Gallegos then moved to suspend the regular order of business and take up **H.B. 1900** for consideration at this time.

The motion was lost by the following vote: Yeas 14, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Barrientos, Ellis, Gallegos, Harris, Lucio, Madla, Moncrief, Montford, Rosson, Truan, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Haywood, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth.

Absent: Cain, Henderson, Luna, Turner.

(Senator Armbrister in Chair)

HOUSE BILL 2035 ON SECOND READING

Senator Nelson again asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 2035, Relating to suspension or revocation of a driver's license of a juvenile.

There was objection.

Senator Nelson then moved to suspend the regular order of business and take up **H.B. 2035** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 4.

Yeas: Armbrister, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Luna, Truan, West.

Absent: Ellis, Montford, Turner.

The bill was read second time and was passed to third reading by the following vote: Yeas 25, Nays 5.

Yeas: Armbrister, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Ellis, Luna, Truan, West.

Absent: Turner.

HOUSE BILL 2035 ON THIRD READING

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2035** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Luna, Truan, West.

Absent: Turner.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Luna, Truan, and West asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2315 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2315, Relating to the regulation of energy and material recovery and of gas recovery.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2315**, Section 1., Sec. 361.0661, line 10 by adding after the word recovery, or transfer and on line 14 after the word recovery, add or transfer.

The committee amendment was read and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Montford asked to be recorded as "Present-not voting" on the adoption of Committee Amendment No. 1.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Montford asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 2315 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2315** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Present-not voting: Moncrief, Montford.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Montford asked to be recorded as "Present-not voting" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 1783 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1783, Relating to the authority to charge a fee for installing or replacing water, sewer lines or other devices.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1783** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.256 to read as follows:

Sec. 13.256. COUNTY FEE. (a) Notwithstanding any other provision of law, a county with a population of more than 2.8 million may not charge a water and sewer utility a fee for the privilege of installing or replacing a water or sewer line in the county's right-of-way.

(b) This section does not affect a franchise agreement or other contract entered into before September 1, 1995.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1783 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1783** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3050 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3050, Relating to exemption of certain funds from consolidation, re-creation of certain funds, preservation and creation of certain dedications of revenue, and exemption of certain unappropriated amounts from use for general governmental purposes.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3050** as follows:

(5) On page 1 of the Senate committee report, delete subsection (35) on line 57 and subsection (37) on line 59 and insert new subsections (35) and (37) as follows:

(35) Bureau of Emergency Management Fund, 512;

(37) Food and Drug Retail Fee Fund, 341.

(6) On page 2, line 10, delete the number "304," and add the number "340."

(7) On page 2, delete subsection (2) on line 27, and renumber subsequent subsections accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 3050** as follows:

Insert "; (40) compensation to victims of crime fund account and the compensation to victims of crime auxiliary fund account" between "account" and "." in SECTION 1 on page 3, line 3.

The amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 3050** as follows:

(1) On page 3 of the Senate committee report, lines 27-28, strike all of SECTION 14 and substitute the following:

"SECTION 14. (a) Effective August 30, 1995, Section 40.151(c), Natural Resources Code, is repealed.

(b) The value of all extant investments are transferred into the coastal protection account to be used for the purposes designated in Chapter 40, Natural Resources Code."

(2) On page 2 of the Senate committee report, lines 31 and 32, delete the following:

- "(6) proprietary school tuition protection fund; and
- (7) cosmetology school tuition protection fund."

(3) On page 1 of the Senate committee report, add the following after line 61:

- "(40) proprietary school tuition protection fund;
- (41) cosmetology school tuition protection fund;
- (42) rural economic development fund no. 425; and
- (43) vital statistics records fund."

(4) On page 2 of the Senate committee report, add the following after line 69:

- "(10) compensation to victims of crime auxiliary fund account."

(5) On page 3 of the Senate committee report, delete existing SECTION 11 at lines 9-15 and substitute the following:

"SECTION 11. Effective August 30, 1995, revenue in excess of 1994 levels, as determined by the comptroller, from receipts for laboratory analysis deposited to account 524 is exempt from Section 403.094, Government Code, and may be used only for the purpose of financing the Texas Department of Health's laboratory facility as established by H.B. 2022, Acts of the 74th Legislature, Regular Session, 1995."

The amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.H.B. 3050 as follows:

Add the appropriately numbered new sections to read as follows:

SECTION ____ The appropriations made to the Department of Public Safety out of the General Revenue Fund-Consolidated in H.B. 1, Seventy-fourth Legislature, Regular Session, are hereby reduced by the amount of \$13,104,518 for fiscal year 1996 and by the amount of \$13,104,518 for fiscal year 1997. In addition, the appropriations made to the Department of Public Safety out of the State Highway Fund in H.B. 1, Seventy-fourth Legislature, Regular Session, are hereby increased by the amount of \$13,104,518 for fiscal year 1996 and by the amount of \$13,104,518 for fiscal year 1997.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3050 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.H.B. 3050 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1662 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1662, Relating to the powers and duties of the Department of Protective and Regulatory Services; providing penalties.

The bill was read second time.

Senator Zaffirini, on behalf of Senator Armbrister, offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1662** as follows:

On page 1, line 64, delete "1999" and substitute "1997".

The amendment was read and was adopted by a viva voce vote.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 1662** as follows:

(1) Add the following appropriately numbered sections and renumber the subsequent sections of the bill accordingly:

SECTION . Section 102.009(a), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) Except as provided by Subsection (b), the following [~~persons~~] are entitled to service of citation on the filing of a petition in an original suit:

- (1) a managing conservator;
- (2) a possessory conservator;
- (3) a person having possession of or access to the child under an order;
- (4) a person required by law or by order to provide for the support of the child;
- (5) a guardian of the person of the child;
- (6) a guardian of the estate of the child;
- (7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161; ~~and~~
- (8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161; and

(9) the Department of Protective and Regulatory Services, if the petition requests that the department be appointed as managing conservator of the child.

SECTION . Section 105.002, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 105.002. JURY. (a) ~~Except as provided by Subsection (b) [in a suit in which adoption is requested],~~ a party may demand a jury trial.

(b) A party may not demand a jury trial in a suit in which adoption is sought, including a trial on the issue of denial or revocation of consent to the adoption by the managing conservator.

(c) The court may not render an order that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of possession of and access to the child, support of the child, and the rights, privileges, duties, and powers of sole managing conservators, joint managing conservators, or possessory conservators, on which the court may submit or refuse to submit issues to the jury as the court determines appropriate, and on which issues the jury verdict is advisory only.

SECTION . Section 108.003, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.003. TRANSMITTAL OF INFORMATION REGARDING ~~[FILES]~~ OF ADOPTION.

(a) ~~The [On rendition of an order of adoption, the] clerk of a [the] court that renders a decree of adoption shall, not later than the 10th day of the first month after the month in which the adoption is rendered, transmit to the central registry of the bureau of vital statistics [department]:~~

~~[(1) a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court, if the petitioner has requested that the complete file be sent, or a certified copy of the petition and order of adoption, excluding pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void; and~~

~~[(2)]~~ a certified report of adoption that includes:

~~(1)[(A)]~~ the name of the adopted child after adoption as shown in the adoption order;

~~(2)[(B)]~~ the birth date of the adopted child;

~~(3)[(C)]~~ the docket number of the adoption suit;

~~(4)[(D)]~~ the identity of the court rendering the adoption;

~~(5)[(E)]~~ the date of the adoption order;

~~(6)[(F)]~~ the name and address of each parent, guardian, managing conservator, or other person whose consent to adoption was required or waived under Chapter 159 [23], or whose parental rights were terminated in the adoption suit;

~~(7)[(G)]~~ the identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption; and

~~(8)(H)~~ the identity, address, and telephone number of the registry through which the adopted child may register as an adoptee.

(b) Except for good cause shown or on an order of the court that granted the adoption or terminated the proceedings under Section 155.001, the records concerning a child maintained by the district clerk after rendition of a decree of adoption, the records of a child-placing agency that has ceased operations, and the records required under this section to

be maintained by the bureau of vital statistics are confidential, and no person is entitled to access to or information from these records.

SECTION . Section 108.005, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.005. ADOPTION RECORDS RECEIVED BY BUREAU OF VITAL STATISTICS [~~DEPARTMENT~~]. (a) When the bureau of vital statistics [~~department~~] receives records from the district clerk, the bureau [~~the complete file or petition and order of adoption, it~~] shall close the records concerning that child. Except for statistical purposes, the bureau [~~department~~] may not disclose any information concerning the prior proceedings affecting the child. Except as provided in Chapter 162, any subsequent inquiry concerning the child who has been adopted shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. The bureau shall provide to the Department of Protective and Regulatory Services registry information as necessary for the department to comply with federal law or regulations regarding the compilation or reporting of adoption information to federal officials and other information as necessary for the department to administer the central registry as provided in Subchapter E, Chapter 162.

(b) On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed, a new file shall be made and maintained.

SECTION . Section 108.007, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 108.007. MICROFILM. (a) The bureau of vital statistics [~~department~~] may use microfilm or other suitable means for maintaining the central record file.

(b) A certified reproduction of a document maintained by the bureau of vital statistics [~~department~~] is admissible in evidence as the original document.

SECTION . Subchapter A, Chapter 153, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 153.013 to read as follows:

Sec. 153.013. FALSE REPORT OF CHILD ABUSE. (a) If a party to a pending suit affecting the parent-child relationship makes a report alleging child abuse by another party to the suit that the reporting party knows lacks a factual foundation, the court shall deem the report to be a knowingly false report.

(b) Evidence of a false report of child abuse is admissible in a suit between the involved parties regarding the terms of conservatorship of a child.

SECTION . Section 154.001, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 154.001. SUPPORT OF CHILD. (a) The court may order either or both parents to support a child in the manner specified by the order:

(1) until the child is 18 years of age or until graduation from high school, whichever occurs later;

(2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or by other operation of law;

(3) until the death of the child; or

(4) if the child is disabled as defined in this chapter, for an indefinite period.

(b) The court may order either or both parents to make periodic payments for the support of a child in a proceeding in which the Department of Protective and Regulatory Services is named temporary managing conservator. In a proceeding in which the Department of Protective and Regulatory Services is named permanent managing conservator of a child whose parents' rights have not been terminated, the court shall order each parent that is financially able to make periodic payments for the support of the child.

SECTION . Sections 155.101(a), (b), and (d), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(a) The petitioner or the court shall request from the bureau of vital statistics [~~Department of Protective and Regulatory Services~~] identification of the court that last had continuing, exclusive jurisdiction of the child in a suit unless:

(1) the petition alleges that no court has continuing, exclusive jurisdiction of the child and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or petition to modify has been filed has acquired and retains continuing, exclusive jurisdiction of the child as the result of a prior proceeding and the issue is not disputed by the pleadings.

(b) The bureau of vital statistics [~~department~~] shall, on the written request of the court, an attorney, or a party:

(1) identify the court that last had continuing, exclusive jurisdiction of the child in a suit and give the docket number of the suit; or

(2) state that the child has not been the subject of a suit.

(d) The bureau of vital statistics [~~department~~] shall transmit the information not later than the 10th day after the date on which the request is received.

SECTION . Section 155.103, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 155.103. RELIANCE ON BUREAU OF VITAL STATISTICS [~~DEPARTMENT~~] INFORMATION. (a) A court shall have jurisdiction over a suit if it has been, correctly or incorrectly, informed by the bureau of vital statistics [~~Department of Protective and Regulatory Services~~] that the child has not been the subject of a suit and the petition states that no other court has continuing, exclusive jurisdiction over the child.

(b) If the bureau of vital statistics [~~department~~] notifies the court that the bureau [~~department~~] has furnished incorrect information regarding the

existence of another court with continuing, exclusive jurisdiction before the rendition of a final order, the provisions of this chapter apply.

SECTION . Section 155.104, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 155.104. VOIDABLE ORDER. (a) If a request for information from the bureau of vital statistics [~~Department of Protective and Regulatory Services~~] relating to the identity of the court having continuing, exclusive jurisdiction of the child has been made under this subchapter, a final order, except an order of dismissal, may not be rendered until the information is filed with the court.

(b) If a final order is rendered in the absence of the filing of the information from the bureau of vital statistics [~~department~~], the order is voidable on a showing that a court other than the court that rendered the order had continuing, exclusive jurisdiction.

SECTION . Section 161.001, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence [~~that~~]:

(1) ~~that~~ the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period

of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Chapter 264;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been adjudicated to be criminally responsible for the death or serious injury of a child ~~[another of his or her children]; [or]~~

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E); or

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than one year, and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not visited or maintained contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment; and

(2) that termination is in the best interest of the child.

SECTION . Section 161.005, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 161.005. TERMINATION WHEN PARENT IS PETITIONER. (a) A parent may file a suit for termination of the petitioner's parent-child relationship. The court may order termination if termination is in the best interest of the child.

(b) If the petition designates the Department of Protective and Regulatory Services as managing conservator, the department shall be given service of citation. The court shall notify the department if the court appoints the department as the managing conservator of the child.

SECTION . Sections 261.001(1), (4), and (6), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an

observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare ~~[offenses under the Penal Code inflicted on, shown to, or intentionally or recklessly practiced in the presence of a child, including:~~

~~[(i) sexual conduct as defined by Section 43.01, Penal Code;~~

~~[(ii) sexual assault as provided by Section 22.011, Penal Code; or~~

~~[(iii) prohibited sexual conduct as provided by Section 25.02, Penal Code];~~

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child ~~[or sexual assault as defined or provided by Sections 43.01 and 22.011, Penal Code, or prohibited sexual conduct as provided by Section 25.02, Penal Code, from being inflicted on or shown to a child by another person or being intentionally or recklessly practiced in the presence of a child by another person];~~

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic.

(4) "Neglect" includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by a person:

(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure

resulting in an observable and material impairment to the growth, development, or functioning of the child; ~~or~~

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(6) "Report" means a report that ~~of~~ alleged or suspected abuse or neglect of a child has occurred or may occur.

SECTION . Section 261.101, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) If a professional has cause to believe that a child has been or may be abused or neglected, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, and day-care employees.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, and a mental health professional.

(d) The identity of an individual making a report under this chapter is confidential and may be disclosed only on the order of a court or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

SECTION . Section 261.102, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.102. MATTERS TO BE REPORTED. A report should reflect the reporter's belief that a child:-

~~[(1)]~~ has been or may be abused or neglected or has died of abuse or neglect;

~~[(2)] has violated the compulsory school attendance laws on three or more occasions; or~~

~~[(3) has, on three or more occasions, been voluntarily absent from home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return].~~

SECTION . Section 261.103, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.103. REPORT MADE TO APPROPRIATE AGENCY. A report shall be made to:

- (1) any local or state law enforcement agency;
- (2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;
- (3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or
- (4) the agency designated by the court to be responsible for the protection of children.

SECTION 90. Section 261.104, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.104. CONTENTS OF REPORT. The person making a report shall identify, if known:

- (1) the name and address of the child;
- (2) the name and address of the person responsible for the care, custody, or welfare of the child; and
- (3) any other pertinent information concerning the alleged or suspected abuse or neglect.

SECTION . Section 261.106, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.106. IMMUNITIES. (a) ~~A [Except for a person who reports the person's own conduct or who acts in bad faith or with malicious purpose, a] person acting in good faith who reports [reporting] or assists [assisting] in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect [under this chapter] is immune from civil or criminal liability that might otherwise be incurred or imposed.~~

(b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person's responsibilities [participation in a judicial proceeding resulting from the report].

(c) A person who reports the person's own abuse or neglect of a child or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability.

SECTION . Section 261.107, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.107. FALSE REPORT; PENALTY. ~~[(a)]~~ A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this subsection is a Class B misdemeanor.

~~[(b) If, in connection with a pending suit affecting the parent-child relationship, a parent of a child makes a report alleging child abuse by the other parent that the parent making the report knows is false or lacks factual foundation, evidence of the report is admissible in a suit between the parents involving terms of conservatorship.]~~

SECTION . Section 261.201, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.201. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except [Except] as otherwise provided in this section, the files, [Subsections (b) and (c), the] reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation [are confidential and may be disclosed only for purposes consistent with the purposes of this code under rules adopted by the investigating agency].

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect.

(c) The adoptive parents of a child who was the subject of an investigation and an adult who was the subject of an investigation as a child are entitled to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department shall

[may] edit the documents to protect the identity of the biological parents and any other person whose identity is confidential.

(d) ~~[(e)]~~ Before placing a child who was the subject of an investigation, the department shall notify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child.

(e) ~~[(d)]~~ The department shall provide prospective adoptive parents an opportunity to examine information under this section as early as practicable before placing a child.

(f) Notwithstanding Subsection (b), the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

SECTION . Section 261.301(d) and (e) Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(d) The department may by rule assign priorities and prescribe investigative procedures for ~~[(to)]~~ investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child.

(e) As necessary to provide for the protection of the child ~~[complete a thorough investigation]~~, the department or designated agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents or persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and
- (7) all other pertinent data.

SECTION . Section 261.302, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (d) to read as follows:

(d) If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from the child's home is necessary to protect the child from further abuse or neglect, the investigating agency shall file a petition or take other action under Chapter 262 to provide for the temporary care and protection of the child.

SECTION . Section 261.303, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 261.303. INTERFERENCE WITH INVESTIGATION; COURT ORDER [TO ASSIST INVESTIGATION]. (a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department or designated agency.

(b) If admission to the home, school, or any place where the child may be cannot be obtained, then for good cause shown the court having family law jurisdiction shall order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance for the interview, examination, and investigation.

(c) ~~[(b)]~~ If a parent or person responsible for the child's care does not consent to a medical, psychological, or psychiatric examination of the child that is requested by the department or designated agency, the court having family law jurisdiction shall, for good cause shown, order the examination to be made at the times and places designated by the court.

SECTION . Section 261.308, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (c) to read as follows:

(c) On receipt of the report and recommendations, the court may direct the department or designated agency to file a petition requesting appropriate relief as provided in this title.

SECTION . Sections 261.401(b) and (c), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(b) ~~[A state agency shall notify the department of each report of abuse or neglect it receives under this subchapter relating to abuse or neglect in a facility operated by the agency according to rules adopted by the department.~~

~~[(c)]~~ A state agency shall adopt rules relating to the investigation and resolution of reports received as provided by ~~[under]~~ this subchapter. The Health and Human Services Commission shall review and approve the rules to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

SECTION . Sections 261.402(b), (c), and (e), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are amended to read as follows:

(b) A state agency shall immediately notify the appropriate state or local law enforcement agency of any report the agency receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or the death of a child from abuse or neglect. [If the investigation relates to a report of abuse or neglect in a facility operated by a state agency, the agency responsible for the investigation shall submit a copy of the investigative report to the department.]

~~[(e)]~~ If the state agency finds evidence indicating that a child may have ~~[has]~~ been ~~[or may be]~~ abused or neglected, the agency shall ~~[submit a copy of the]~~ report the evidence ~~[of its investigation]~~ to the appropriate law enforcement agency.

(e)* A state agency [~~The department~~] shall compile, maintain, and make available statistics on the incidence of child abuse and neglect in a facility operated by the [a] state agency.

SECTION . Chapter 261, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Sections 261.404, 261.405, and 261.406 to read as follows:

Sec. 261.404. INVESTIGATIONS IN FACILITIES UNDER DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. The department shall investigate a report of abuse or neglect in a facility operated by, regulated by, or providing services under a contract with the Texas Department of Mental Health and Mental Retardation under rules developed jointly between the department and the Texas Department of Mental Health and Mental Retardation.

Sec. 261.405. INVESTIGATIONS IN COUNTY JUVENILE DETENTION FACILITIES. A report of alleged abuse or neglect in a county juvenile detention facility shall be made to a local law enforcement agency for investigation.

Sec. 261.406. INVESTIGATIONS IN SCHOOLS. (a) On receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school under the jurisdiction of the Central Education Agency, the department shall perform an investigation as provided by this chapter.

(b) The department shall send a written report of the department's investigation to the Central Education Agency and the local school board or local governing body for appropriate action. The department shall provide a copy of the report and investigation findings to the parent, managing conservator, or legal guardian of a child who is the subject of the report.

SECTION . Section 262.004, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.004. ACCEPTING VOLUNTARY DELIVERY OF POSSESSION OF CHILD. A [~~An authorized representative of the Department of Protective and Regulatory Services, a~~] law enforcement officer[;] or a juvenile probation officer may take possession of a child without a court order on the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

SECTION . Section 262.005, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.005. FILING PETITION AFTER ACCEPTING VOLUNTARY DELIVERY OF POSSESSION OF CHILD. When possession of the child has been acquired through voluntary delivery of the child to a law enforcement officer or juvenile probation officer [~~governmental entity~~], the law enforcement officer or juvenile probation officer [entity] taking the child into possession shall cause a suit to be filed not later than the 60th day after the date the child is taken into possession.

SECTION . Section 262.101, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.101. FILING PETITION BEFORE TAKING POSSESSION OF CHILD. A petition or affidavit filed by a governmental entity requesting permission to take possession of a child in an emergency shall be sworn to by a person with personal knowledge and shall state facts sufficient to satisfy a person of ordinary prudence and caution that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse and that continuation in the home would be contrary to the child's welfare even if reasonable in-home services were provided; and

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing or to make reasonable efforts to prevent or eliminate the need for the removal of the child.

SECTION . Section 262.102, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.102. EMERGENCY ORDER AUTHORIZING POSSESSION OF CHILD. (a) Before a court may issue a temporary restraining order or attachment of a child in a suit requesting an emergency order brought by a governmental entity, the court must find ~~[be satisfied from a sworn petition or affidavit]~~ that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse and that continuation in the home would be contrary to the child's welfare even if reasonable in-home services were provided; and

(2) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, to hold [for] an adversary hearing or to make reasonable efforts to prevent or eliminate the need for removal of the child.

(b) In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child's household includes a person who has ~~[possession of the child has]~~:

(1) abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) sexually abused another child.

SECTION . Section 262.107, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.107. STANDARD FOR DECISION AT INITIAL HEARING AFTER TAKING POSSESSION OF CHILD WITHOUT A COURT ORDER IN EMERGENCY. (a) The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that:

(1) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child[;] or

~~[(2)]~~ the evidence shows that the child has been the victim of sexual abuse on one or more occasions and that there is a substantial risk ~~[reasonable likelihood]~~ that the child will be the victim of sexual abuse in the future; and

(2) the nature of the emergency and the continuing danger to the welfare of the child make efforts to allow the child to remain with or return to the person entitled to possession of the child impossible or unreasonable.

(b) In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which ~~[person to whom]~~ the child would be returned includes a person who has:

(1) abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) sexually abused another child.

SECTION . Subchapter B, Chapter 262, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 262.111 to read as follows:

Sec. 262.111. FINDING THAT CHILD CANNOT REMAIN IN OR BE RETURNED TO HOME. In the absence of a specific finding to the contrary, the issuance of a temporary restraining order or attachment pending a full adversary hearing or the issuance of an order after a full adversary hearing constitutes a finding by the court that for the child to remain in the home is contrary to the child's welfare or safety and that the emergency made efforts to prevent or eliminate the need for the removal of the child impossible or unreasonable.

SECTION . Section 262.201, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 262.201. FULL ADVERSARY HEARING; FINDINGS OF THE COURT. (a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity.

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child; [and]

(2) the urgent need for protection required the immediate removal of the child and makes efforts to eliminate or prevent the child's removal impossible or unreasonable; and

(3) notwithstanding reasonable efforts to eliminate the need for the child's removal and enable the child to return home, there is a substantial risk [reasonable probability] of a continuing danger if the child is returned home.

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105.

(d) In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household [person] to which [whom] the child would be returned includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.

SECTION . Section 263.001(a), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subdivision (2) and adding Subdivisions (3) and (4) to read as follows:

(2) "Child's home" means the place of residence of at least one of the child's parents.

(3) "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

(4) "Substitute care" means the placement of a child who is in the conservatorship of the department or an authorized agency in care outside the child's home. The term includes foster care, institutional care, adoption, or placement with a relative of the child.

SECTION . Section 263.002, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. In a suit affecting the parent-child relationship in which the department or an authorized agency has been appointed by the court or designated in an affidavit of relinquishment of parental rights as the temporary or permanent managing conservator of a child, the court shall hold a hearing to review the conservatorship appointment and substitute [the department's or authorized agency's placement of the child in foster home care, group home care, or institutional] care.

SECTION . Section 263.003(c), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(c) The department shall request a review of substitute [the placement of the child in foster home care, group home care, or institutional] care, and its petition shall state that the purpose of the suit is to initiate periodic review of the necessity and propriety of the child's placement under this chapter.

SECTION . Section 263.202(b), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) A status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department or other agency filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1) a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child; and

(2) the child's parents have reviewed and understand the service plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents.

SECTION . Section 263.303(b), Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The status report must:

(1) evaluate all relevant information concerning each of the guidelines under this chapter and the parties' compliance with the service plan; ~~and~~

(2) recommend one of the following actions:

(A) that the child be returned to the child's home and that the suit be dismissed;

(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;

(C) that the child remain in substitute ~~foster~~ care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;

(D) that the child remain in substitute ~~foster~~ care for a specified period and that termination of parental rights be sought under this code;

(E) that a child who has resided in substitute ~~foster~~ care for at least 18 months be placed or remain in permanent or long-term foster care because of the child's special needs or circumstances; or

(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances; and

(3) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

SECTION . Section 263.304, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.304. INITIAL REVIEW HEARING; TIME. Not later than the 180th day after the date of the conclusion of the full adversary hearing

under Chapter 262, the court shall hold a ~~[review]~~ hearing to review the status of, and permanency plan for, a child in substitute care in the court's jurisdiction, including the time for the completion of the plan and the projected date for the achievement of the child's permanency plan.

SECTION . Section 263.306, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.306. REVIEW HEARINGS: PROCEDURE. At each review hearing the court shall determine:

(1) the identity of [identify] all persons or parties present at the hearing or those given notice but failing to appear;

(2) ~~[consider all relevant information pertaining to the factors under this chapter to determine]~~ whether the child's parents are willing and able to provide the child with a safe environment;

(3) ~~[determine]~~ the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in the service plan;

(4) whether the child continues to need substitute care and whether the child's current placement is appropriate for meeting the child's needs;

(5) a date for achieving the child's permanency plan;

(6) if the child has been in substitute care for not less than 18 months, the future status of the child and the appropriateness of the date by which the child may return home and whether to render further appropriate orders;

(7) if the child is in substitute care outside the state, whether the out-of-state placement continues to be appropriate and in the best interest of the child;

(8) ~~[determine]~~ whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;

(9) ~~[(5) determine]~~ whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or continue the placement of the child in the child's home under the department's or other agency's supervision;

(10) ~~[(6) determine]~~ whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;

(11) ~~[(7) determine]~~ whether a long-term substitute [foster] care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term substitute [foster] care placement and if the child is placed in institutional care, whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(12) ~~[(8)—determine]~~ whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from substitute ~~[foster]~~ care to independent living if the services are available in the community;

(13) ~~[(9)—determine]~~ whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;

(14) ~~[(10)—determine]~~ whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department managing conservator and, if so, direct the department or authorized agency to institute further proceedings; and

(15) ~~[(11)—determine]~~ whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.

SECTION . Section 263.308, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.308. PARENTS UNABLE OR UNWILLING TO CARE FOR CHILD. ~~[(a)]~~ In a case in which the court determines that an order for the child to remain in the managing conservatorship of the department or other agency is appropriate, the court shall make a finding that the child's parents understand that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code.

~~[(b) In the case of a child residing in foster care for at least 18 months, the court shall determine the appropriateness of the target date by which the child may return home. The court may also enter further orders that are appropriate.]~~

SECTION . Section 264.009, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 264.009. LEGAL REPRESENTATION OF DEPARTMENT ~~[IN TRIAL COURT]~~. (a) Except as provided by Subsection (b), in [In] any action [suit brought] under this title [in which the department requests to be named conservator of a child], the department shall be represented in [the trial] court by the:

(1) prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the action ~~[suit]~~ is brought ~~[filed or transferred]~~; or

(2) attorney general.

(b) In a county with a population of 2,800,000 or more, in an action under this title, the department shall be represented in court by the:

(1) attorney who represents the state in civil cases in the district or county court of the county where the action is brought; or

(2) attorney general.

SECTION . Subchapter B, Chapter 264, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 264.109 to read as follows:

Sec. 264.109. ASSIGNMENT OF SUPPORT RIGHTS IN SUBSTITUTE CARE CASES. (a) The placement of a child in substitute care by the department constitutes an assignment to the state of any support rights attributable to the child as of the date the child is placed in such care.

(b) If a child placed by the department in substitute care is entitled under federal law to Title IV-D child support enforcement services without the requirement of an application for services, the department shall immediately refer the case to the Title IV-D agency. If an application for Title IV-D services is required and the department has been named managing conservator of the child, then an authorized representative of the department shall be the designated individual entitled to apply for services on behalf of the child and shall promptly apply for such services.

(c) The department and the Title IV-D agency shall execute a memorandum of understanding for the implementation of the provisions of this section and for the allocation between the department and the agency, consistent with federal laws and regulations, of any child support funds recovered by the Title IV-D agency in substitute care cases. All child support funds recovered under this section and retained by the department or the Title IV-D agency and any federal matching or incentive funds resulting from child support collection efforts in substitute care cases shall be in excess of amounts otherwise appropriated to either the department or the Title IV-D agency by the legislature.

SECTION . Sections 162.023 and 162.024, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, are repealed.

The amendment was read and was adopted by a viva voce vote.

Senator West offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 1662 by adding the following appropriately numbered Sections to read as follows and renumbering subsequent Sections accordingly:

SECTION ____ . Section 42.022, Human Resources Code, is amended by amending Subsections (b) and (c) and by adding Subsection (h) to read as follows:

(b) Members of the committee serve for terms of two years expiring on February 1 of each odd-numbered year.

(c) The ~~[board shall appoint the]~~ advisory committee is composed of 12 members appointed by the board. The members must have the following qualifications ~~[to provide for balanced representation for]:~~

(1) two must be parents, guardians, or custodians of children who use the facilities;

(2) two must be representatives of child advocacy groups;

(3) two must be operators of nonprofit child-care [the] facilities that are licensed under this chapter;

(4) two must be experts in various professional fields that are relevant to child care and development; [and]

(5) two must be members of the general public; and

(6) two must be operators of proprietary child-care facilities that are licensed under this chapter.

(h) In making appointments to the committee, the board shall consider whether the committee reflects the race, ethnicity, and age of the residents of this state and whether the committee provides representation of the geographic regions of the state.

SECTION ____ . Section 42.042, Human Resources Code, is amended by amending Subsection (e) and by adding Subsections (m), (n), and (o) to read as follows:

(e) The department shall promulgate minimum standards that apply to licensed [for] child-care facilities covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(m) The department shall ensure that each child-care facility that provides care for less than 24 hours a day complies with the appropriate minimum standards relating to staff-child ratios, group sizes, and square footage as those minimum standards existed on September 1, 1985. The department may not enforce new standards in relation to staff-child ratios, group sizes, or square footage that are more stringent than the 1985 standards for those facilities. This subsection expires September 1, 1997.

(n) In determining minimum standards for child-care facilities that provide care for less than 24 hours a day, the department shall, within available appropriations, conduct a comprehensive cost-benefit analysis and economic impact study that includes families and licensed child-care providers.

(o) Not later than the 60th day before the date the board adopts a revision to the minimum standards for child-care facilities, the department shall present the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

SECTION ____ . (a) The terms of the current members of the State Advisory Committee on Child-Care Administrators and Facilities expire on the date on which a majority of the new members have been appointed.

(b) On September 1, 1995, or as soon as possible after that date, the Board of Protective and Regulatory Services shall appoint new members

to the advisory committee to accomplish the membership plan for the advisory committee established by Subsection (c), Section 42.022, Human Resources Code, as amended by this Act, for terms expiring February 1, 1997.

(c) The changes in law made by this Act to the qualifications of the members of the advisory committee apply only to members appointed on or after the effective date of this Act.

SECTION _____. The Department of Protective and Regulatory Services shall contract with a public or private entity to conduct an independent comprehensive cost-benefit analysis and economic impact study relating to staff-child ratios, group sizes, and square footage requirements that are contained in any minimum standards for child-care facilities that the Board of Protective and Regulatory Services adopted in 1994. The Department of Protective and Regulatory Services shall submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the 75th Legislature not later than December 1, 1996.

The amendment was read and was adopted by a viva voce vote.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.H.B. 1662 by inserting new SECTIONS 11, 12, 13, and 14; and renumbering the remaining SECTIONS accordingly, as follows:

SECTION 11. Section 263.306, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 263.306. REVIEW HEARINGS: PROCEDURE. At each review hearing the court shall consider whether returning the child to the custody and control of the child's parents is in the best interest of the child and shall:

(1) identify all persons or parties present at the hearing or those given notice but failing to appear;

(2) consider all relevant information pertaining to the factors under this chapter to determine whether the child's parents are willing and able to provide the child with a safe environment;

(3) determine the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in the service plan;

(4) determine whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;

(5) determine whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or continue the placement of the child in the child's home under the department's or other agency's supervision;

(6) determine whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;

(7) determine whether a long-term foster care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term foster care placement;

(8) determine whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from foster care to independent living if the services are available in the community;

(9) determine whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;

(10) determine whether the department or authorized agency has custody, care, and control of the child under an affidavit or relinquishment of parental rights naming the department managing conservator and if so, direct the department or authorized agency to institute further proceedings; and

(11) determine whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.

SECTION 12. Section 263.307(b), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) The following factors should be considered by the court, the department, and other authorized agencies in determining whether the child's parents are willing and able to provide the child with a safe environment:

(1) the child's age and physical and mental vulnerabilities;

(2) the frequency and nature of out-of-home placements;

(3) the magnitude, frequency, and circumstances of the harm to the child;

(4) whether the child has been the victim of repeated harm after the initial report and intervention by the department or other agency;

(5) whether the child would benefit by returning to the child's home;

(6) whether the child is fearful of living in or returning to the child's home;

(7) ~~(6)~~ the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;

(8) ~~(7)~~ whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;

(9) ~~(8)~~ whether there is a history of substance abuse by the child's family or others who have access to the child's home;

(10) ~~(9)~~ whether the perpetrator of the harm to the child is identified;

(11) ~~(10)~~ the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with the facilities and appropriate agency's close supervision;

(12) ~~(11)~~ the willingness and ability of the child's family to effect positive environment and personal changes within a reasonable period of time;

(13) ~~(12)~~ whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:

(A) minimally adequate health and nutritional care;

(B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;

(C) guidance and supervision consistent with the child's safety;

(D) a safe physical home environment;

(E) protection from repeated exposure to violence even though the violence may not be directed at the child; and

(F) an understanding of the child's needs and capabilities; and

(14) ~~(13)~~ whether an adequate social support system consisting of an extended family and friends is available to the child.

SECTION 13. Section 264.002, Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsections (f)-(h) to read as follows:

(f) To ensure that the professional training curriculum for investigators is up-to-date and consistent with current research by nationally recognized behavioral scientists, including clinical child psychologists, child psychiatrists, and childhood behavioralists with expertise in the prevention of abuse and neglect and the treatment of children at risk of abuse, the department annually shall review the training curriculum in:

(1) child abuse;

(2) the indicators of a false allegation of child abuse;

(3) methods of preventing and treating child abuse; and

(4) interview techniques.

(g) The department is encouraged to the extent reasonable and practical to hire as an investigator or as a supervisor of an investigator only a person who holds a bachelor's degree.

(h) The department is encouraged to adopt standards for continuing education and training curriculum for investigators.

SECTION 14. Section 264.201(a), Family Code, as added by H.B. 655, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) When the department provides services directly or by contract to an abused or neglected child and the child's family, the services shall be designed to:

- (1) prevent further abuse;
- (2) alleviate the effects of the abuse suffered;
- (3) prevent removal of the child from the home and to foster, encourage, and support a strengthened parent-child relationship; and
- (4) provide reunification services when appropriate for the return of the child to the home.

The amendment was read and was adopted by a viva voce vote.

Senator Turner offered the following amendment to the bill:

Floor Amendment No. 5

Amend C.S.H.B. 1662 as follows:

1) On page 5, line 28 (committee printing), in proposed Section 40.052, insert "(a)" after "SERVICES." and before the word "The".

2) On page 5, line 40 (committee printing), in proposed Section 40.052, add Subsections (b), (c) and (d) to read as follows:

(b) To encourage community efforts to preserve family unity, facilitate the protection of children from abuse and neglect, and improve service delivery at the local level, the department shall develop a matching grant program to foster the creation of local community partnership boards for child and family services. The department may annually solicit applications for new community partnership boards and shall distribute grants on a matching-funds basis to new and existing local boards. Funds for the grants shall be obtained through interagency contract from the commission. The department may accept only one application from each county. An application submitted under this Section must demonstrate that the proposed board is a collaborative initiative among entities contributing significant funding for child and family services within the county. The department shall adopt rules regarding board membership, matching grant criteria, certification of boards, technical assistance, accountability, and powers and duties of local boards.

(c) The commission shall transfer to the department through interagency contract funds appropriated by the legislature for local boards or commissions relating to child and family services for the purpose of funding grants under this Section. The department may retain up to two percent of funds appropriated for grants under this Section for the administration of the grant program and technical assistance for local boards.

(d) Local community partnership boards established under this Section shall promote volunteer involvement in and coordination of child and family services, but may not directly provide services. Each local board shall submit to the department a local plan which may include local budgetary priorities and proposals for alternative delivery systems. Local boards may apply for matching grants to contract for local child and family services. A local community partnership board shall have all powers necessary for effective operation. Members of such boards shall include, at a minimum, parents, representatives of business, religious and civic organizations, and elected officials. A board established under this

Section is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code. A member of a board established under this Section is not liable for civil damages for any act performed in good faith in the execution of duties as a board member.

The amendment was read and was adopted by the following vote:
Yeas 17, Nays 12.

Yeas: Armbrister, Barrientos, Cain, Ellis, Gallegos, Harris, Luna, Madla, Moncrief, Montford, Rosson, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Haywood, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

Absent: Henderson, Lucio.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 6

Amend C.S.H.B. 1662 as follows:

SECTION _____. Subchapter A, Chapter 47, Human Resources Code, is amended by adding Section 47.006 to read as follows:

Sec. 47.006. ADVISORY COMMITTEE ON PROMOTING ADOPTION OF MINORITY CHILDREN. (a) An advisory committee on promoting the adoption of and provision of services to minority children is established within the department.

(b) The committee is composed of 12 members appointed by the board of the Department of Protective and Regulatory Services. The board shall appoint to the committee individuals who in the aggregate have knowledge of an experience in community education, cultural relations, family support, counseling, and parenting skills and education. At least six members must be ordained members of the clergy.

(c) A committee member serves for a two-year term and may be appointed for additional terms.

(d) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(e) The committee shall elect one member to serve as presiding officer. The presiding officer serves for a two-year term and may be elected for additional terms.

(f) The department shall set the time and place of the first committee meeting. The committee shall meet at least quarterly.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) To promote the adoption of and provision of services to minority children, the committee shall:

(1) study, develop, and evaluate programs and projects relating to community awareness and education, family support, counseling, parenting skills and education, and reform of the child welfare system;

(2) consult with churches and other cultural and civic organizations; and

(3) report to the department at least annually the committee's recommendations for department programs and projects that will promote the adoption of and provision of services to minority children.

(i) On receiving the committee's recommendations, the department may adopt rules to implement a program or project recommended under this section. The department may solicit, accept, and use gifts and donations to implement a program or project recommended by the committee.

(j) The department shall report to the legislature not later than November 1 of each even-numbered year following the first year in which it receives recommendations under this section regarding committee recommendations and action taken by the department under this section.

(k) The recruitment of minority families may not be a reason to delay placement of a child with an available family of a race or ethnicity different from that of the child.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1662 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1662** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Rosson, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Ratliff, Shapiro.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Ratliff and Shapiro asked to be recorded as voting "Nay" on the final passage of the bill.

(President in Chair)

STATEMENT OF LEGISLATIVE INTENT

Senator Turner submitted the following statement of legislative intent on **C.S.H.B. 1662**:

In offering my amendment to **C.S.H.B. 1662** providing for the creation of local community service boards for child and family services, it is my intent that the funds appropriated in the \$5 million contingency rider for **S.B. 574** (authorizing local child and family commissions),

74th Legislature, Regular Session, under the Health and Human Services Commission, would be transferred by interagency contract from the Health and Human Services Commission to the Department of Protective and Regulatory Services for the purpose of providing grants to local community service boards for child and family services.

TURNER

HOUSE BILL 1957 ON SECOND READING

On motion of Senator Brown, on behalf of Senator Sims, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1957, Relating to the punishment for the offense of theft of cattle, horses, sheep, swine, goats, exotic livestock, or exotic fowl.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1957 ON THIRD READING

Senator Brown, on behalf of Senator Sims, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1957** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1991 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1991, Relating to the historically underutilized business and small business linked deposit program.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1991 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1991** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE

HOUSE BILL 2510 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2510, Relating to regulation of certain irrigators and irrigation system installers.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2510** on page 2, line 18 (committee printing) by adding new sentence to read as follows:

"Irrigation system does not include a system used on or by an agricultural operation as defined in Section 251.002, Agriculture Code."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2510 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2510** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2936 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2936, Relating to financing of certain projects for certain counties.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2936** by inserting "owned by a county" after "improvements" and before "that" on line 9, page 4.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2936 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2936** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2256 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2256, Relating to viatical settlements.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2256** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Article 3.50-6A, Insurance Code, is amended to read as follows:

Art. 3.50-6A. VIATICAL SETTLEMENTS

Sec. 1. DEFINITIONS. In this article;

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Viatical [~~-, "viatical"~~] settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays compensation or anything of value that is less than the expected death benefit of a policy insuring the life of an individual who has a catastrophic or life-threatening illness or condition in return for the policy owner's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit under or ownership of the policy [a contract, entered into by an insured with a terminal illness who owns a life insurance policy insuring the life of the insured, under which the insured assigns or transfers the insurance policy to another person or entity for valuable consideration].

Sec. 2. RULES. (a) The purpose of this article is to register persons engaged in the business of viatical settlements and to provide consumer protection for a person with a catastrophic or life-threatening illness or condition who may sell or otherwise transfer the person's life insurance policy.

(b) The commissioner shall adopt reasonable rules to implement this article.

(c) The rules adopted by the commissioner under this article must include rules governing:

(1) registration of a person engaged in the business of viatical settlements;

(2) approval of contract forms;

(3) disclosure requirements;

(4) prohibited practices relating to:

(A) discrimination in the provision of viatical settlements; and

(B) referral fees paid by persons engaged in the business of viatical settlements;

(5) the assignment or resale of life insurance policies; and
(6) the maintenance of appropriate confidentiality of personal and medical information.

(d) The commissioner may adopt rules requiring payment of an annual fee in connection with registration. The fee may not exceed \$250.

Sec. 3. ENFORCEMENT. For a violation of a rule adopted under this article, the commissioner may take any action against a person engaged in the business of viatical settlements that may be taken under:

(1) Articles 1.10 and 1.10E of this code;

(2) Article 1.10D of this code against a person engaged in a fraudulent insurance act; or

(3) Article 1.14-1 of this code against a person engaged in the unauthorized business of insurance.

Sec. 4. RELATION TO OTHER INSURANCE LAWS. Except as otherwise provided by this article or by rules adopted under this article, this code and any other insurance law of this state do not apply to the business of viatical settlements [REGULATION BY BOARD. The board has exclusive jurisdiction in this state to regulate viatical settlements, regardless of form, other than transactions governed by The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995.

(b) Section 3, Article 3.50-6A, Insurance Code, as added by this Act, takes effect January 1, 1996.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2256 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that H.B. 2256 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2294 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2294, Relating to the regulation of groundwater.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend H.B. 2294 as follows:

(1) In SECTION 2 of the bill, in proposed Section 36.201, Water Code (House engrossment, page 59, between lines 16 and 17), insert the following:

(c) The board may not levy a tax to pay the maintenance and operating expenses of the district under this section until the tax is approved by a majority of the electors voting at an election in the district held for that purpose. The district may:

(1) hold an election for approval of the tax at the same time and in conjunction with an election to authorize bonds, following the procedures applicable to a bond election; or

(2) hold a separate election for approval of the tax in accordance with Subsection (d).

(d) An order calling a separate election for approval of a tax under this section must be issued at least 15 days before the date of the election, and the election notice must be published at least twice in a newspaper of general circulation in the district. The first publication of the notice must be at least 14 days before the date of the election.

(2) Add the following section, appropriately numbered, and renumber the subsequent sections of the bill accordingly:

SECTION ____ . An election conducted by a district formerly governed by Chapter 52, Water Code, on August 14, 1993, at which voters in the district approved the levy of taxes for the district's maintenance and operating expenses, is validated in all respects as of the date on which the election occurred. A district's levy and collection of taxes, as approved by that election, and a district's subsequent acts and proceedings may not be held invalid on the ground that the district was not authorized to levy the taxes or conduct the election.

The committee amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend H.B. 2294 as follows:

(1) In Sec. 36.205, page 24, between lines 34 and 35, insert the following:

"(c) Any fee set by a district for a well used for agricultural irrigation purposes for which a permit is issued by the district and which is not exempted from regulation by the district shall not exceed 1.00 dollar per acre foot of water pumped or the maximum fee expressly set forth in the enabling act or other state law applicable specifically to such district.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 2294** as follows:

(1) In Sec. 36.205, page 24, after subsection (c) add the following subsection:

"(d) Any fee set by a district for a well used for municipal or domestic purposes for which a permit is issued by the district and which is not exempted from regulation by the district shall not exceed 5 cents per thousand gallons pumped or the maximum fee expressly set forth in the enabling act or other state law applicable specifically to such district."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2294 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2294** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 44, Relating to the provision of good conduct time to inmates sentenced to the institutional division of the Department of Criminal Justice. (As substituted)

S.B. 46, Relating to requiring victim notification when an inmate escapes from a facility operated by the institutional division of the Texas Department of Criminal Justice.

S.B. 47, Relating to notification of certain persons about procedures in the community supervision process that apply to defendants who victimized those persons.

S.B. 111, Relating to conditions of community supervision, parole, and release on mandatory supervision for defendants charged with or convicted of certain sexual offenses against or involving children. (As substituted and amended)

S.B. 135, Relating to the punishment for the offense of violation of a protective order by a habitual offender under that statute.

S.B. 369, Relating to the continuation and functions of the State Preservation Board. (As amended)

S.B. 400, Relating to the application of the doctrine of forum non conveniens to certain actions.

S.B. 480, Relating to the jurisdiction of the Railroad Commission of Texas over pipeline safety. (As amended)

S.B. 607, Relating to benefits for the detection and prevention of osteoporosis under group health insurance policies. (As amended)

S.B. 726, Relating to energy conservation measures by institutions of higher education. (As substituted)

S.B. 1135, Relating to the Commission on Law Enforcement Officer Standards and Education. (As amended)

S.B. 1291, Relating to the practice of perfusion.

S.B. 1360, Relating to the operation and management of the Texas Turnpike Authority; providing penalties. (As substituted and amended)

S.B. 1658, Relating to tax credits for real property contributed to institutions of higher education.

S.B. 1685, Relating to the detection and prevention of prostate cancer. (As substituted)

S.B. 1704, Relating to the review and approval of certain permits by the state, a municipality, or other local governmental agencies.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE BILL 1900 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time again on its second reading and passage to third reading:

H.B. 1900, Relating to routine purchases and contracts made by a port commission.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Leedom asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1900 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1900** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Leedom.

The bill was read third time and was passed by the following vote:
Yeas 30, Nays 1. (Same as previous roll call)

HOUSE BILL 2843 ON SECOND READING

Senator Brown again moved to suspend the regular order of business to take up for consideration at this time:

H.B. 2843, Relating to the adoption of rules by the Texas Natural Resource Conservation Commission.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, West.

Nays: Barrientos, Gallegos, Rosson, Truan, Whitmire, Zaffirini.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 1

(1) Amend **H.B. 2843** SECTION 1 (page 1, line 6) caption by striking "and (f)" and substituting "(f), and (g)".

(2) Amend **H.B. 2843** SECTION 1, Section 5.103 (page 2, line 3) by adding a new subsection (g) to read as follows:

"(g) The commission shall adopt rules that prohibit the executive director from initiating or pursuing an administrative enforcement action or referring a matter to the office of the attorney general for the initiation or pursuit of an enforcement action that seeks assessment of any civil or criminal penalty if the U.S. Environmental Protection Agency would be barred from initiating the action under 23 U.S.C. Sec. 2462."

The committee amendment was read.

On motion of Senator Brown and by unanimous consent, the committee amendment was withdrawn.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

(1) Amend **H.B. 2843** SECTION 1 (page 1, line 6) caption by striking "and (f)" and substituting "(f), and (g)".

(2) Amend **H.B. 2843** SECTION 1, Section 5.103 (page 2, line 3) by adding a new subsection (g) to read as follows:

"(g) The commission shall adopt rules that prohibit the executive director from initiating or pursuing an administrative enforcement action or referring a matter to the office of the attorney general for the initiation or pursuit of an enforcement action that seeks assessment of any civil or criminal penalty if the U.S. Environmental Protection Agency would be barred from initiating the action under 28 U.S.C. Sec. 2462."

The amendment was read and was adopted by the following vote:
Yeas 22, Nays 9.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth.

Nays: Barrientos, Gallegos, Leedom, Luna, Rosson, Truan, West, Whitmire, Zaffirini.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 2

Amend H.B. 2843 (Senate committee printing) as follows:

(1) Add to the bill new Sections 2 and 3 to read as follows:

SECTION 2. Section 26.023, Water Code, is amended to read as follows:

Sec. 26.023. WATER QUALITY STANDARDS. (a) The commission by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The commission has the sole and exclusive authority to set water quality standards for all water in the state.

(b) The commission shall consider the existence and effects of nonpoint source pollution, toxic materials, and nutrient loading in developing water quality standards and related waste load models for water quality.

(c) Water quality standards shall consist of designated uses of water and water quality criteria necessary to maintain the designated uses.

(d) In adopting water quality standards, the commission:

(1) where appropriate, shall designate aquatic life uses of water and water quality criteria for dissolved oxygen that, during hydrologic conditions that include the low-flow conditions used in establishing discharge permit limits, are no more stringent than necessary to attain and maintain conditions in the natural environment combined with conditions that may result from impacts not regulated under state or federal law;

(2) may designate seasonal uses or criteria consistent with this section and based on seasonally compiled water flow and water quality information;

(3) may designate aquatic life uses or criteria for dissolved oxygen applicable during periods of significant storm water runoff that are no more stringent than necessary to attain and maintain conditions in the natural environment during such a period in combination with conditions that may result from impacts not regulated under state or federal law; and

(4) may not establish a dissolved oxygen criterion of greater than 3.0 milligrams per liter that is applicable to a perennial unclassified stream unless the commission determines, relying on appropriate technical information for the affected body of water, that a higher dissolved oxygen level would be attained and maintained in the natural environment in combination with conditions that may result from impacts not regulated under state or federal law.

(e) In the notice of proposed rulemaking for a new water quality standard or an amendment to a water quality standard, the commission shall include a statement of the technical basis for each element of the proposal and a reference to the technical information and studies on which the commission relies in formulating each proposed criterion or presumption. The commission shall make available to the public the technical information and studies that support the proposed rule, including the information or studies supporting each proposed criterion or presumption.

(f) Notwithstanding any other provision of this section, the commission may adopt water quality standards as necessary to receive delegation of the National Pollution Discharge Elimination System program from the United States Environmental Protection Agency. The water quality standards adopted under this subsection may not exceed the minimum standards necessary to receive the delegation. The commission may adopt dissolved oxygen criteria more stringent than 3.0 milligrams per liter only if the United States Environmental Protection Agency notifies the commission that the dissolved oxygen criterion of 3.0 milligrams per liter is the sole cause preventing the state from receiving delegation of the National Pollution Discharge Elimination System program.

SECTION 3. If, on the effective date of Section 2 of this Act, there is in effect for a stream a dissolved oxygen standard that does not conform to Section 26.023, Water Code, as amended by this Act, the Texas Natural Resource Conservation Commission shall adopt for the stream a new dissolved oxygen standard in accordance with that section as soon as is practicable but not later than December 31, 1995. A dissolved oxygen standard that does not conform to Section 26.023, Water Code, as amended by this Act, may be enforced until December 31, 1995, or until the date a new enforceable standard takes effect, whichever is sooner.

(2) Renumber Section 2 of the bill as Section 4 and in Subsection (a) of that section strike "Not later than the 180th day after the effective date of this Act," and substitute "Not later than March 1, 1996,".

(3) Strike Sections 3 and 4 of the bill and substitute the following:

"SECTION 5. This Act takes effect immediately, except that Section 1 of this Act takes effect September 1, 1995.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted."

The amendment was read and was adopted by the following vote:
Yeas 23, Nays 6.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, West.

Nays: Barrientos, Gallegos, Rosson, Truan, Whitmire, Zaffirini.

Absent: Lucio, Luna.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 3

Amend SECTION 1 of **H.B. 2843** by inserting the following at the end of the last sentence in subsection (e):

and a cost-benefit analysis of the proposed rule. The cost-benefit analysis must describe costs expected to be imposed on state or local governments or the regulated community in complying with the proposed rule and the benefits, including beneficial environmental impacts, anticipated from adoption of the proposed rule. The cost-benefit analysis must also include, if applicable, reasonable alternative methods that were considered by the agency and the reasons for rejecting those alternatives in favor of the proposed rule, including a brief summary of the relative costs and benefits of such alternatives.

The amendment was read and was adopted by a viva voce vote.

Senator Haywood offered the following amendment to the bill:

Floor Amendment No. 4

Amend **H.B. 2843** by adding a new SECTION ____ adding a new Section 5.1031 of the Water Code to read as follows, renumbering the following SECTIONS appropriately:

Sec. 5.1031. The commission shall develop rules that provide for the streamlining of permit processing such that applications for all permits required by the commission for a facility or operation that are filed within a reasonable time of each other are reviewed in a coordinated manner and considered in one consolidated permit hearing. Unless otherwise required by federal statute, the commission may provide by rule that only one permit is required for conducting a particular activity so long as all environmental effects are considered during the permitting process. If a facility has previously obtained a permit pursuant to one statutory requirement, the commission may not require a review of the activities under that permit as part of another permit application although the commission may require the facility or operation to demonstrate compliance with applicable state or federal requirements during the commission's consideration of a subsequent permit application or during any renewal or amendment of the original permit. In addition, the commission may adopt rules which exempt certain types of facilities or units, when obtaining permits, from reviews under other programs within its jurisdiction provided such facilities were exempt from such reviews by statute in existence prior to passage of the statute creating the current commission.

The amendment was read and was adopted by the following vote:
Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Gallegos, Truan.

(Senator Armbrister in Chair)

Senator Brown, on behalf of Senator Armbrister, offered the following amendment to the bill:

Floor Amendment No. 5

Amend **H.B. 2843** by inserting the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill:

SECTION ____ . Section 361.428(b) and Section 361.428(c), Health and Safety Code, is amended to read as follows:

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial use of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards which are no more stringent than the pollutant limits established by the Environmental Protection Agency in 40 CFR Part 503 and a definition of beneficial reuse. ~~[The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards.]~~ Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) The commission may not require a [A] composting facility which [may not] accepts mixed municipal solid waste from a governmental unit for composting purposes to provide [at that facility unless] residents with [have] reasonable access to household hazardous waste collection and source-separated recycling programs. ~~[in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.]~~

The amendment was read and was adopted by the following vote: Yeas 22, Nays 9.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth.

Nays: Barrientos, Gallegos, Moncrief, Rosson, Truan, Turner, West, Whitmire, Zaffirini.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 6

Amend **H.B. 2843** by inserting the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill:

SECTION ____ . Section 361.428(b), Health and Safety Code, is amended to read as follows:

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that

produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial use of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover. The term does include the composting of non-hazardous sludge by-products generated from the production of paper at all facilities regulated by the commission if done so under applicable federal rules or guidelines.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Gallegos asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 6.

Floor Amendment No. 7 was not offered.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Gallegos, Rosson, Truan, Whitmire, and Zaffirini asked to be recorded as voting "Nay" on the passage of the bill to third reading.

(President in Chair)

HOUSE BILL 2843 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2843** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, West.

Nays: Barrientos, Gallegos, Rosson, Truan, Whitmire, Zaffirini.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Gallegos, Rosson, Truan, Whitmire, and Zaffirini asked to be recorded as voting "Nay" on the final passage of the bill.

(Senator Sibley in Chair)

REASON FOR VOTE

Senator Sims submitted the following reason for vote on **H.B. 2843**:

I voted for **H.B. 2843**, in part, because it contains language which matches the intent of **S.B. 977**, which I authored and the Senate passed, relating to the beneficial land application of biosolids. **H.B. 2843** mandates that the Texas Natural Resource Conservation Commission not adopt rules and regulations that exceed federal rules or regulations in all areas of its jurisdiction except in extreme circumstances. **S.B. 977** was intended to provide that same scrutiny to regulations pertaining to Texas beneficial land application of biosolids, and this bill does the same. **H.B. 2843** is further proof of legislative intent to promote the beneficial use of biosolids and to avoid burdensome unnecessary regulations.

SIMS

(President in Chair)

MOTION TO PLACE

HOUSE BILL 552 ON SECOND READING

Senator Haywood, on behalf of Senator Sims, asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 552, Relating to peace officers of hospitals in certain municipalities.

There was objection.

Senator Haywood, on behalf of Senator Sims, then moved to suspend the regular order of business and take up **H.B. 552** for consideration at this time.

The motion was lost by the following vote: Yeas 17, Nays 10. (Not receiving two-thirds vote of Members present)

Yeas: Barrientos, Bivins, Brown, Cain, Galloway, Haywood, Leedom, Madla, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sims, Wentworth, Zaffirini.

Nays: Ellis, Gallegos, Henderson, Lucio, Luna, Montford, Rosson, Truan, Turner, Whitmire.

Absent: Armbrister, Harris, Sibley, West.

COMMITTEE SUBSTITUTE

HOUSE BILL 958 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 958, Relating to the authority of certain counties to impose a county hotel occupancy tax.

The bill was read second time.

Senator Madla, on behalf of Senator Lucio, offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 958** as follows:

On page 1, line 50, delete "or (11)"

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 958** as follows:

1) On page 1, line 62 of the committee printing of **C.S.H.B. 958** between "used" and "for" strike "only".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 958 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 958** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE CONCURRENT RESOLUTION 169

Senator Cain offered the following resolution:

WHEREAS, **H.B. 466** has been passed by the Senate and is now in the House, and there are certain corrections to be made therein; now, therefore, be it

RESOLVED, By the Senate of the State of Texas, the House of Representatives concurring, that the House is hereby respectfully requested to return **H.B. 466** to the Senate for further consideration.

The resolution was read.

On motion of Senator Cain and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1204

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1204** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 1204** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Brown, Whitmire, Shapiro, and Patterson.

**SENATE RULE 7.21 SUSPENDED
(Printing Rule)**

On motion of Senator Barrientos and by unanimous consent, Senate Rule 7.21 was suspended as it relates to the printing of the House amendment to **S.B. 1396**.

SENATE BILL 1396 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1396** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 1396** as follows:

On page 3, after line 10, add a new subsection (c) to read as follows and renumber subsequent subsections:

"(c) Upon the request of any residents of a district subject to this section the municipality may conduct an election on a uniform election date at which election voters who are residents of the district may vote for or against a ballot proposal to dissolve the district. If more than one district was created on the same date and the districts are contiguous, the election shall be a combined election of all such districts, with a majority of votes cast by all residents of the districts combined required for dissolution of the districts. If a majority of votes are in favor of dissolution, the date of dissolution shall be December 31 of the same year in which the election is held. Upon dissolution of the district, all property and obligations of a dissolved district become the responsibility of the municipality."

On page 4, beginning on line 10, delete "\$800,000 for" and substitute "than reasonable and actual"

On page 4, line 17, between the word "district" and the word "must" add the following:

"may not use bond proceeds to pay for impact fees but"

The amendment was read.

Senator Barrientos moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 1396** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Truan, Wentworth, Ratliff, and Luna.

CONFERENCE COMMITTEE ON HOUSE BILL 1593

Senator Brown called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **H.B. 1593** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **H.B. 1593** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Bivins, Lucio, Sims, and Haywood.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 870

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 22, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 870** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MADLA
LUCIO
MONCRIEF

On the part of the Senate

GIDDINGS
BERLANGA
CHISUM
MARCHANT
S. TURNER
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the authority of the consumer credit commissioner and to the regulation of certain consumer credit practices; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.02A, Title 79, Revised Statutes (Article 5069-2.02A, Vernon's Texas Civil Statutes), is amended by adding Section (12) to read as follows:

(12)(a) The Consumer Credit Commissioner may not accept or use money offered by an individual, firm, partnership, corporation, or association either (i) for investigating or prosecuting a matter or (ii) if that individual, firm, partnership, corporation, or association is affiliated with any industry under the regulatory jurisdiction of the Finance Commission.

(b) The Consumer Credit Commissioner may accept money, gifts, and grants on behalf of the state for purposes related to consumer credit educational opportunities or to assist local governments in the exercise of their police power unless the acceptance is prohibited under Subsection (a) of this section or other law. Money received under this subsection shall be deposited in the general revenue fund to the credit of an account established for the receipt of those funds and may be appropriated only for the purposes for which the money was given. Acceptance and use of money under this subsection is subject to approval of the Finance Commission.

(c) Notwithstanding Subsection (a), the Consumer Credit Commissioner is not prohibited from receiving and using money from persons under the jurisdiction of the commissioner if expressly authorized by law.

SECTION 2. Article 2.06, Title 79, Revised Statutes (Article 5069-2.06, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.06. ADVERTISING. (1) No person shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan or credit transaction regulated by the statutes listed by Section (1), Article 2.02A of this title [Subtitle Two]. If rates or charges are stated in advertising they shall be stated fully and clearly.

(2) A person may not advertise or otherwise perform any act or offer any service that would cause another to believe that the person is offering to make, arrange, or negotiate a loan that is subject to the statutes listed by Section (1), Article 2.02A, of this title unless the person is authorized to perform that act or offer that service as:

(a) a credit service organization under Chapter 18, Business & Commerce Code;

(b) a pawnbroker under the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes); or

(c) an authorized lender under this subtitle.

(3) A person commits an offense if the person violates Section (2) of this article. An offense under this section is a Class C misdemeanor.

(4) A person who violates Section (2) of this article may be prosecuted under Section (3) of this article or may be subject to the penalties provided under Chapter 8 of this title and to any civil penalties that the Consumer Credit Commissioner may assess, but is not subject to both prosecution under Section (3) and the penalties.

(5) In each advertisement that purports to offer credit subject to the statutes listed by Section (1), Article 2.02A, of this title, the advertiser shall disclose the legal or properly registered name of the advertiser and the physical address of the advertiser's place of business unless the advertisement is located on the premises of the advertiser's place of business or the advertisement is broadcast by radio or television. If the advertisement is broadcast by radio or television, the advertiser shall disclose the legal or properly registered name and the telephone number of the advertiser and shall comply with the applicable disclosure requirements of Regulation Z (12 C.F.R. 226.1 et seq.). This section does not apply to a federally insured depository institution or to a person engaged in interstate commerce who advertises under a generally recognized trade name, abbreviated form of a trade name, or logo.

SECTION 3. Article 2.07, Title 79, Revised Statutes (Article 5069-2.07, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.07. CREDIT AND LOANS TO INDIVIDUALS. No authorized lender [licensee] under Chapter 3 of this Title or other person involved in transactions subject to this Title may deny an individual who has the capacity to contract credit or loans in his or her name, or restrict or limit the credit or loan granted [solely] on the basis of sex, race, color, religion, [or] national origin, marital status, or age or because all or part of the individual's income derives from a public assistance program in the form of social security or supplemental security income, or the individual has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.; 18 U.S.C. Section 891 et seq.). In interpreting this section, the courts and administrative agencies shall be guided by the federal Equal Credit Opportunity Act and regulations thereunder and interpretations thereof by the Federal Reserve Board to the extent that that Act and those regulations and interpretations pertain to conduct prohibited by this section.

SECTION 4. Section (a), Article 8.06, Title 79, Revised Statutes (Article 5069-8.06, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any person who violates the terms of Article 2.07 of this Title is liable to the aggrieved individual for the actual damages caused by the denial, punitive damages not to exceed \$10,000 in an action brought by the aggrieved individual [or for \$50,000, whichever is greater], and court costs. The liability of any person under this Article for a violation of Article 2.07 of this Title is in lieu of and not in addition to that person's liability under Title VII of the Consumer Credit Protection Act (15 U.S.C. Section 1691 et seq.). If the same act or omission constitutes a violation of Article 2.07 of this Title and of applicable federal law, the person aggrieved by that conduct may bring a legal action to recover monetary damages either under this Article or under that federal law, but not both.

SECTION 5. This Act applies only to acts done and transactions entered into on or after the effective date of this the law in effect immediately before this Act takes effect, and that law continues in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1995.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1231

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 24, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1231 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ARMBRISTER
BARRIENTOS
LEEDOM
MONTFORD
SIBLEY

HIGHTOWER
RANGEL
TELFORD
WILSON

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the powers and duties of and systems and programs under the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 805.002, Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (g) and (h) to read as follows:

(a) Except as provided by Subsection (h), a [A] member of both the employees retirement system and the teacher retirement system who applies

for service or disability retirement from either system may transfer to that system service credit established in the other system if the member has at least three years of service credit in the system from which the member is retiring. If a person whose membership was transferred from the teacher retirement system to the employees retirement system pursuant to Section 43(a), Chapter 812, Acts of the 73rd Legislature, 1993, ceases to hold any position included in the membership of the employees retirement system before the earlier of the date the person retires or dies, the person's service credit accrued in the teacher retirement system before the date the membership was transferred remains credited in that system, unless the person has withdrawn contributions made for the service.

(b) Except as provided by Subsection (h), a [A] member of both the employees retirement system and the teacher retirement system who has less than three years of service credit in the system in which the person most recently received service credit and at least three years of service credit in the other system may, at the time the person applies for service or disability retirement [from the other system], transfer service credit to the other [that] system from the system in which the person most recently received service credit.

(d) Except as provided by Subsections (e) and (f), the designated beneficiary of a member of the employees retirement system or the teacher retirement system who dies while holding a position included in the membership of the system may make a transfer under Subsection (a) and a reinstatement or purchase under Subsection (c) if the deceased member had at least three years of service credit in the system in which the member was performing service at the time of death. The designated beneficiary may make a transfer under Subsection (b) if the deceased member had less than three years of service credit in the system in which the member was performing service at the time of death. If a member is not survived by a designated beneficiary, an alternate beneficiary, or a beneficiary provided by law or has failed to designate a beneficiary after becoming a member or resuming membership, the personal representative of the member's estate has the same right under this subsection as a designated beneficiary. A transfer of service by the beneficiary or personal representative of a deceased member's estate is not permitted unless the transfer will result in the payment of a death benefit annuity.

(g) To be eligible to make a transfer pursuant to Subsection (d), a person must be the same beneficiary under both retirement systems.

(h) A member applying for occupational disability retirement from the employees retirement system may transfer service credit from the teacher retirement system only if the member was contributing to the employees retirement system at the time the disabling condition occurred.

SECTION 2. Section 805.003, Government Code, is amended to read as follows:

Sec. 805.003. PAYMENTS TO REINSTATE OR PURCHASE SERVICE CREDIT. The cost of reinstating or purchasing service credit under Section 805.002 is determined according to the statutes that govern the

reinstatement or purchase of the type of service credit in the system in which it is to be reinstated or purchased. All payments for service credit reinstated or purchased under Section 805.002 must be made before retirement or the first payment of a death benefit annuity, as applicable, or before a later date if allowed for members of the retirement system in which the credit is to be reinstated or purchased.

SECTION 3. Sections 805.007(a) and (b), Government Code, are amended to read as follows:

(a) A person who transfers service credit under this chapter forfeits all rights to benefits payable by the system from which it is transferred and is not an annuitant of that system for any purpose, including the payment of postretirement increases to annuitants of that system. This subsection does not preclude a person from receiving benefits as a beneficiary of an account not related to the transferred service credit.

(b) Service credit transferred under this chapter is considered as if it had been granted for service performed under the system to which it has been transferred and is used in satisfying minimum service requirements for retirement and in determining the amount of benefits that are based on the amount of a person's service credit:

(1) except that a person's average salary for the purpose of computing an annuity may be determined only from service credit that was originally established in one system and that results in the higher average salary; ~~and~~

(2) except as provided by Section 805.006; and

(3) except service credit transferred by a member applying for occupational disability retirement.

SECTION 4. Section 805.008, Government Code, is amended to read as follows:

Sec. 805.008. RESPONSIBILITY FOR BENEFIT PAYMENTS.

(a) Except as provided by Subsection (c), the [The] system from which a person's service credit is transferred under this chapter shall transfer to the other system, at the time the annuity based on the service credit becomes payable, an amount equal to the portion of the actuarial value of the annuity that represents the percentage of the total amount of the person's service credited in both systems that was credited in the system from which the credit is being transferred.

(b) Except as provided by Subsection (c), the [The] systems jointly by rule shall adopt actuarial tables and investment assumptions to be used in computing actuarial values under this section.

(c) As an alternative to Subsections (a) and (b), the systems by rule may require the system from which service credit is transferred to pay monthly an amount equal to the portion of the actual value of the monthly payment of the annuity that represents the percentage of the total amount of service credit that is transferred.

(d) For the purpose of computing an amount to be transferred under this section, service credit in either system must be considered as if it were credited under rules of the teacher retirement system determining the amount of service creditable.

(e) ~~[(d)]~~ An amount transferred under this section is payable from amounts credited to the person's individual account and amounts credited to the account in which the system places state contributions. Except as provided by Subsection (g), an [An] amount received under this section shall be deposited in the account from which the system receiving the amount pays annuities.

(f) ~~[(e)]~~ The system to which a transfer is made under this section is responsible for paying the annuity for which the transfer was made, including the entire amount of any increase in the annuity granted after the transfer.

(g) At the time of the death of a person whose membership was transferred from the teacher retirement system to the employees retirement system pursuant to Section 43(a), Chapter 812, Acts of the 73rd Legislature, 1993, the teacher retirement system shall transfer to the employees retirement system the person's service credit in the teacher retirement system and, if employment with the transferring agency was continuous from the date of transfer to the date of death:

(1) an amount determined under Subsections (a) and (b) or under Subsection (c), if an annuity is paid under Chapter 814; or

(2) the amount of money in the member savings account plus an amount equal to five percent of the person's account balance for each full year of service credited in the teacher retirement system, if a death benefit other than an annuity is paid under Chapter 814.

SECTION 5. Section 805.002(c), Government Code, is amended to read as follows:

(c) Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system may reinstate or purchase service credit in the other system for the purpose of making a transfer under Subsection (a) if the member has at least three years of service credit in the system in which the person currently is a member. Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system, who before September 1, 1993, transferred at least three years of service credit to the system in which the person currently is a member, and who has at least three years of service credit other than the transferred credit in the system in which the person currently is a member may reinstate or purchase service credit in the other system for the purpose of making a transfer of all service credit to that other system.

SECTION 6. Section 813.104, Government Code, is amended by amending Subsection (d), relettering Subsection (e) as Subsection (g), and adding new Subsections (e) and (f) to read as follows:

(d) Except as provided by Subsection (e), payments [Payments] may not be made under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 813.201.

(e) The designated beneficiary of a deceased member, or if none exists, the personal representative of the decedent's estate, may establish or reestablish service for which the member was eligible at the time of death if the establishment of the service would result in the payment of a death benefit annuity or an increase in the amount of a death benefit annuity.

(f) The payment for the establishment or reestablishment of service under Subsection (e) must be made in a lump sum and completed before the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

(g) [(e)] The retirement system may adopt rules to administer this section.

SECTION 7. Subchapter D, Chapter 813, Government Code, is amended by adding Section 813.305 to read as follows:

Sec. 813.305. MILITARY SERVICE CREDIT GOVERNED BY UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT. The retirement system may adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. Section 4301 et seq.) and other federal laws affecting the crediting of military service.

SECTION 8. Section 813.506, Government Code, is amended to read as follows:

Sec. 813.506. CUSTODIAL OFFICER SERVICE. (a) The Texas Department of Criminal Justice [~~Corrections~~] by rule shall adopt standards for determining eligibility for service credit as a custodial officer, based on the need to encourage early retirement of persons whose duties are hazardous and require them to have routine contact with inmates of or defendants confined in the state jail division of the Texas Department of Criminal Justice [~~Corrections~~] on a regular basis.

(b) To be creditable as custodial officer service, service performed must meet the requirements of the rules adopted under Subsection (a) and may be performed by persons in one of the following job categories:

(1) all persons classified as Correctional Officer I through warden, including training officers and special operations reaction team officers;

(2) all other employees assigned to work on a unit and whose jobs require routine contact with inmates or defendants confined in the state jail division, including but not limited to farm managers, livestock supervisors, maintenance foremen, shop foremen, medical assistants, food service supervisors, stewards, education consultants, commodity specialists, and correctional counselors;

(3) employees assigned to administrative offices whose jobs require routine contact with inmates or defendants confined in the state jail division at least 50 percent of the time, including but not limited to investigators, compliance monitors, accountants routinely required to audit unit operations, sociologists, interviewers, classification officers, and supervising counselors; and

(4) administrative positions whose jobs require response to emergency situations involving inmates or defendants confined in the state

jail division, including but except as specified not limited to the director, deputy directors, assistant directors, and not more than 25 administrative duty officers.

(c) The ~~[institutional division of the]~~ Texas Department of Criminal Justice shall determine a person's eligibility to receive credit as a custodial officer. A determination of the department ~~[division]~~ may not be appealed by an employee but is subject to change by the retirement system.

(d) ~~[(c)]~~ As part of the audit of ~~[the institutional division of]~~ the Texas Department of Criminal Justice by the state auditor in accordance with Chapter 321, the state auditor ~~[State Auditor]~~ may verify the accuracy of reports submitted to the retirement system under this section. The state auditor shall review biennially the standards adopted by the department under Subsection (a).

SECTION 9. Section 813.509, Government Code, is amended to read as follows:

Sec. 813.509. CREDIT FOR ACCUMULATED SICK LEAVE. (a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment. Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated sick leave. An increment of less than 20 days is not creditable.

(b) A member who holds a position included in the employee class may use sick leave creditable under this section to satisfy service requirements for retirement under Section 814.104 or 814.107 if the sick leave attributed to the eligibility requirements remains otherwise unused on the last day of employment.

(c) Except as provided by Subsection (d), the ~~[The]~~ disbursing officer of each department or agency shall, before the 11th day after the effective date of retirement of one or more employees of the department or agency ~~[of each month]~~, certify to the retirement system:

(1) the name of each person whose retirement from the department or agency, and from state service, became effective during the preceding month; and

(2) the amount of the person's accumulated sick leave on the last day of employment.

(d) The disbursing officer of a department or agency that employs a member who applies for retirement under Subsection (b) shall, not more than 90 or less than 30 days before the effective date of the member's retirement, certify to the retirement system the amount of the member's accumulated and unused sick leave. The officer shall immediately notify the retirement system if the member uses sick leave after the date of certification.

(e) ~~[(c)]~~ On receipt of a certification under Subsection (c) or (d) ~~[(b)]~~, the retirement system shall grant any credit to which a retiring member or retiree who is a subject of the certification is entitled. An increase in the

computation of an annuity because of credit provided by this section after a certification under Subsection (c) begins with the first payment that becomes due after certification.

(f) The retirement system shall cancel the retirement of a person who used sick leave creditable under this section to qualify for service retirement if the sick leave is otherwise used by the person before the effective date of retirement.

(g) In this section, "sick leave" does not include credit granted under an agency sick-leave pool or under the Family and Medical Leave Act of 1993 (Pub. L. 103-3).

SECTION 10. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.510 to read as follows:

Sec. 813.510. CREDIT FOR CERTAIN AGRICULTURAL SERVICE.

(a) An eligible member may, before January 1, 1996, elect to establish service credit in the retirement system for service performed for the Department of Agriculture as an employee of the Federal State Inspection Service of Texas.

(b) A member eligible to establish credit under this section is one who became an employee of or resumed employment with the Department of Agriculture in May 1992 on the creation of the Texas Cooperative Inspection Program.

(c) A member may establish credit under this section by depositing with the retirement system:

(1) a contribution based on the member's monthly compensation during the period of service for the Department of Agriculture as an employee of the Federal State Inspection Service of Texas and computed for the number of months for which credit is sought at the combined contribution rates required during the period for the state and employee members of the system for new service;

(2) interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit; and

(3) any membership fees required of members of the system during the period of the service.

(d) An election under this section must be filed with the retirement system on a form provided by the system. Credit may be established under this section by a lump-sum payment or by payments authorized by Section 813.104 or 813.105.

(e) The retirement system shall deposit the compensation contribution in the member's individual account in the employees saving account, interest in the state accumulation account, and membership fees in the expense account.

(f) The retirement system shall determine the amount to be deposited in each case and may not grant service credit to a member under this section until the member provides proof of eligibility for the credit that is satisfactory to the retirement system.

SECTION 11. Section 814.003, Government Code, is amended by adding Subsection (e) to read as follows:

(e) If a person elects to receive a standard disability retirement annuity and dies during the first calendar month that begins after the effective date of the person's retirement, the person is considered to have been a contributing member at the time of death.

SECTION 12. Section 814.004, Government Code, is amended to read as follows:

Sec. 814.004. WHEN BENEFITS ARE PAYABLE. A monthly annuity payable to a retiree or beneficiary is payable to that person through the month in which the person dies. A continuation of an optional annuity or the payment of a death or survivor benefit annuity begins with payment for the month following the month in which the death occurs. [An annuity provided by this chapter accrues for the period beginning on the first day of the month that begins after the month in which a person dies or retires, as applicable, and ending, except as otherwise provided by this chapter, on the day the person who receives the annuity dies.]

SECTION 13. Subchapter A, Chapter 814, Government Code, is amended by adding Sections 814.006 and 814.007 to read as follows:

Sec. 814.006. SIMULTANEOUS DEATH OF MEMBER AND BENEFICIARY. When a member or annuitant and the beneficiary of the member or annuitant have died within a period of less than 120 hours, the member or annuitant is considered to have survived the beneficiary for the purpose of determining the rights to amounts payable under this subtitle on the death of the member or annuitant.

Sec. 814.007. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

SECTION 14. Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.008 to read as follows:

Sec. 814.008. REVOCATION OF BENEFICIARY BY DIVORCE DECREE. (a) In this section, "divorce decree" means a judgment, decree, order, or qualified domestic relations order, including a document approving a property settlement agreement, that is issued by a court under a domestic relations law of this or another state in conjunction with the dissolution of a marriage and that relates to the marital property rights of a retiree and that person's former spouse.

(b) On receipt of a certified copy of a divorce decree that purports to revoke or order the revocation of a designation by a retiree of a beneficiary under this subchapter, accompanied by a written directive from a retiree requesting the change, the retirement system shall change its records in accordance with the directive and decree.

(c) If a divorce decree revokes or orders the revocation of a designation of a beneficiary made by a retiree who retired under an optional retirement annuity described by Section 814.108(c)(1) or (c)(2) or another optional retirement annuity selection approved by the board of trustees by rule, the retiree may select a standard retirement annuity or another beneficiary for the optional retirement annuity selected at the time of retirement. If the retirement system receives from a retiree who retired under an optional retirement annuity a written directive and certified decree, as described in this section, that revokes a beneficiary designation but does not designate a substitute beneficiary, the retiree shall be considered to have selected a standard retirement annuity, and the retirement system shall recompute the annuity of the retiree as a standard annuity. Thereafter, if the retiree designates another beneficiary by written directive filed with the retirement system, the retirement system shall recompute and reinstate the optional annuity giving effect to the new beneficiary designation on a prospective basis only. A retiree may make a change of beneficiary under this subsection only to a spouse and only once during the retiree's lifetime.

(d) The retirement system shall recompute the annuity of a retiree who makes a selection under Subsection (c) to reflect that selection and shall adjust the annuity as appropriate for early retirement and postretirement increases provided after the date of the retiree's retirement. The retirement system by rule shall provide for the recovery of the actuarial value, if any, of the difference between payments under the original and recomputed annuities by determining the recomputed annuity so that the actuarial present value of the recomputed annuity is equal to the actuarial present value of the original retirement annuity as of the date the retirement system receives the directive to change the beneficiary.

(e) Payment of a recomputed annuity becomes effective the month following receipt by the retirement system of the actuarial recomputation.

(f) The retirement system shall determine, on receipt of a certified copy of a divorce decree purporting to revoke a beneficiary designation under this section, whether the decree clearly revokes or permits the revocation of a beneficiary designation. The retirement system may decline to implement a beneficiary change if it determines that the decree fails to specify clearly that a beneficiary change is within the scope of the decree. The court that issued the decree or that would otherwise have

jurisdiction over the matter has jurisdiction to amend the decree to clarify the scope of the decree, even if all other matters incident to the action or proceeding have been fully and finally adjudicated.

(g) A determination by the retirement system under this section may be appealed only to a district court of Travis County, Texas. The retirement system, the board of trustees, and officers and employees of the retirement system are not liable to any person for making or failing to make a beneficiary designation change pursuant to a decree submitted under this section.

(h) The board of trustees of the retirement system may adopt rules it considers necessary to implement this section.

(i) This section expires January 1, 1996.

SECTION 15. Sections 814.107(b) and (f), Government Code, are amended to read as follows:

(b) The standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for that service for the 36 highest months of compensation, times the sum of the percentage factor used in the computation of a standard service retirement annuity under Section 814.105 plus .5 percent, ~~a percentage derived from the following table:~~

Years of Law Enforcement or	Percentage of Average
Custodial Officer Service Credit	Monthly Compensation
[at least 20 but less than 21]	50 percent
[at least 21 but less than 22]	52 percent
[at least 22 but less than 23]	54 percent
[at least 23 but less than 24]	56 percent
[at least 24 but less than 25]	58 percent
[at least 25 but less than 26]	60 percent
[at least 26 but less than 27]	62 percent
[at least 27 but less than 28]	64 percent
[at least 28 but less than 29]	66 percent
[at least 29 but less than 30]	68 percent
[at least 30 but less than 31]	70 percent
[at least 31 but less than 32]	71 percent
[at least 32 but less than 33]	72 percent
[at least 33 but less than 34]	73 percent
[at least 34 but less than 35]	74 percent
[at least 35 but less than 36]	75 percent
[at least 36 but less than 37]	76 percent
[at least 37 but less than 38]	77 percent
[at least 38 but less than 39]	78 percent
[at least 39 but less than 40]	79 percent
[40 or more]	80 percent]

(f) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer may not exceed 100 ~~[80]~~ percent of the higher of the average compensation computed under Section 814.105 or the average compensation computed under Subsection (b).

SECTION 16. Section 814.108, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Except as provided by Section 814.1081, a person who selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Subsection (c)(1) or (c)(2) may not change or revoke a beneficiary designation after the person's effective date of retirement.

SECTION 17. Section 814.1081, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A person who retired and selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Section 814.108(c)(1) or (c)(2) may change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection, if the person designated as beneficiary has executed since the designation a transfer and release, approved by a court of competent jurisdiction, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or child. If a retiree files a request as provided by this subsection, the retirement system shall recompute the annuity as a standard service retirement annuity. The right to receive payment of an annuity as adjusted as provided by this subsection begins with the first payment that becomes due after the date a request is filed as provided by this subsection. This subsection expires January 1, 1996.

SECTION 18. Sections 814.207(b), (d), and (e), Government Code, are amended to read as follows:

(b) Except as provided by Subsection (c), an occupational disability retirement annuity under this section is an amount, but not more than 100 ~~80~~ percent, computed on the basis of the officer's monthly compensation at the time of the disabling injury or disease, times a percentage derived by application of ~~[the table provided by]~~ Section 814.107(b).

(d) The ~~portions~~ ~~[portion]~~ of the annuity under this section payable from the law enforcement and custodial officer supplemental retirement fund ~~are~~ ~~[is]~~ the amount remaining after deduction of any amount payable under Section 814.206, except the portion of an amount that exceeds the minimum payments provided by Section 814.206(b) and that is made for service other than as a law enforcement or custodial officer and any amount by which an annuity is increased under Subsection (e).

(e) If a retiring member or retiree under this section presents evidence satisfactory to the retirement system that the person's condition makes the person incapable of gainful occupation and is considered a total disability under federal social security law, the retirement system shall increase the person's occupational disability retirement annuity to 100 percent of the officer's monthly compensation at the time of the disabling injury or disease. [If Section 815.405 is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.]

SECTION 19. Section 814.301, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this section unless the designation is made after the date of the divorce.

SECTION 20. Section 814.302(a), Government Code, is amended to read as follows:

(a) If a member eligible to select a death benefit plan under Section 814.301 dies without having made a selection, or if a selection cannot be made effective, the member's designated beneficiary ~~[surviving spouse]~~ may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary ~~[surviving spouse]~~, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees. In lieu of selecting a death benefit plan, the designated beneficiary ~~[surviving spouse]~~ or, if there is none, the personal representative of the decedent's estate, may elect to receive a refund of contributions and any applicable payment under Section 814.401.

SECTION 21. Sections 814.401(b) and (d), Government Code, are amended to read as follows:

(b) The benefit provided by this section is payable to the beneficiary designated by the member under Section 814.403(b) ~~[a person designated by the member in a signed document filed with the retirement system]~~. If a member does not designate a beneficiary or if the beneficiary designation cannot be made effective ~~[does not survive the member]~~, the benefit is payable to the member's estate.

(d) A death benefit may not be paid under this section if, at the time of death, a death benefit annuity ~~[under Section 814.301]~~ became effective.

SECTION 22. Section 814.403, Government Code, is amended to read as follows:

Sec. 814.403. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (d) ~~[(c)]~~, if a member dies before retirement, the amount in the member's individual account in the employees saving account at the time of death is payable as a lump-sum death benefit.

(b) Except as provided by Subsection (c), the ~~[The]~~ benefit provided by this section is payable to a person designated by the member in a signed and witnessed document filed with the retirement system before the member's death. A designation, change, or revocation of a beneficiary in a will or other document not filed with the retirement system is not effective. If a member does not designate a beneficiary or if the beneficiary designation cannot be made effective ~~[does not survive the member]~~, the benefit is payable to the member's estate.

(c) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this section unless the designation is made after the date of the divorce.

(d) A death benefit may not be paid under this section if, at the time of death, a death benefit annuity ~~[under Section 814.301]~~ became effective.

SECTION 23. Section 814.501, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system before the retiree's death. A designation, change, or revocation of a beneficiary in a will or other document not filed with the retirement system is not effective. If a retiree does not designate a beneficiary or if the beneficiary designation cannot be made effective [does not survive the retiree], the benefit is payable to the retiree's estate.

(c) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this section unless the designation is made after the date of the divorce.

SECTION 24. Sections 814.603(a) and (d), Government Code, are amended to read as follows:

(a) The retirement system shall make a supplemental payment as provided by Subsection (d) to persons whose annuities are described by Section 814.107, 814.207, 814.305, or 814.601(a) and that are based on service retirements, disability retirements, or deaths. This supplemental payment is in addition to the regular monthly annuity payment. Each person who receives an annuity described by this subsection is entitled to receive one payment equal to 10 percent of one month's annuity payment for each fiscal year that preceded or includes the effective date of the requirement or authorization under Subsection (d) and [before the fiscal year beginning September 1, 1993,] in which the annuity has been paid. A supplemental payment may not exceed 350 percent of a monthly annuity. [Only a person whose annuity began in the fiscal year ending August 31, 1993, or earlier is eligible for the supplemental payment.] Supplemental payments under this subsection must comply with Section 811.006.

(d) The retirement system shall make a supplemental payment under this section in the fiscal year ending August 31, 1997. The board of trustees may by rule authorize similar supplemental payments in succeeding [the] fiscal years [year ending August 31, 1995], if the payments are in compliance with Section 811.006.

SECTION 25. Section 815.006, Government Code, is amended to read as follows:

Sec. 815.006. COMPENSATION; EXPENSES. (a) Notwithstanding Subchapter C of Chapter 659, trustees ~~[Trustees]~~ who are contributing members of the retirement system serve without compensation but are entitled to reimbursement for all actual and necessary expenses that they incur in the performance of official board duties.

(b) Notwithstanding Subchapter C of Chapter 659, subject [Subject] to the approval of the board of trustees, trustees who are not contributing members of the retirement system may receive:

- (1) compensation; and
- (2) reimbursement for all actual and necessary expenses that they incur in the performance of official board duties.

SECTION 26. The heading of Section 815.110, Government Code, is amended to read as follows:

Sec. 815.110. AUDITS ~~[MANAGEMENT AUDIT]~~.

SECTION 27. Section 815.110, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The board of trustees annually shall select an independent auditor to perform a financial audit of the retirement system. The selection shall be made under a competitive bidding process in which the state auditor is eligible to bid.

SECTION 28. Section 815.301(b), Government Code, is amended to read as follows:

(b) The board of trustees may delegate its authority under Subsection (a) to the executive director. The board of trustees or the executive director may, under the standard of care provided by Section 815.307, invest and reinvest any of the retirement system's assets and may commingle assets of the trust fund and the law enforcement and custodial officer supplemental retirement fund with the assets of the Judicial Retirement System of Texas Plan Two for investment purposes, as long as proportionate ownership records are maintained and credited. Investments may include home office facilities, including land, equipment, and office building, used in administering the retirement system.

SECTION 29. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.511 to read as follows:

Sec. 815.511. APPEAL OF ADMINISTRATIVE DECISION. A person aggrieved by a decision of any retirement system administered by the board of trustees denying or limiting membership, service credit, or eligibility for or the amount of benefits payable by a system may appeal the decision to the board. The appeal is a contested case under the administrative procedure law, Chapter 2001. On judicial appeal the standard of review is by substantial evidence.

SECTION 30. (a) Except as provided by Subsections (b) and (c) of this section, annuities that are described by Section 814.107, 814.207, 814.305, or 814.601(a), Government Code, and are based on service retirements, disability retirements, or deaths that occurred before September 1, 1995, are increased by 12.5 percent.

(b) Annuities are increased under Subsection (a) of this section only if the actuary for the Employees Retirement System of Texas certifies, based on an August 31, 1995, actuarial valuation, that all annuity increases and annuity recomputations required or authorized by this Act, together with all other actuarial liabilities resulting from legislation that is enacted by the 74th Legislature in 1995 before August 31 and that has or will become law, will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years. For purposes of this subsection, a bill will become law if it has not taken effect but either has been signed by the governor or the time provided for gubernatorial action under Section 14, Article IV, Texas Constitution, has expired without the governor having vetoed the bill. The increase in annuities under Subsection (a) of this section is payable beginning with the first monthly payments of the annuities that become due after the month in which the actuarial certification required by this subsection is made to the board of trustees of the retirement system.

(c) Retirements that occurred under the provisions of Section 814.1051 or 814.1071, Government Code, are not increased by this section.

(d) The board of trustees of the retirement system shall pay the increased annuities provided by this section from the retirement annuity reserve account of the retirement system and may transfer to that account from the state accumulation account of the retirement system any portion of the amount that exceeds the amount in the retirement reserve account available to finance the increases in benefits, and that is actuarially determined to be necessary to finance the increases, for the duration of the annuities to which the increases apply.

SECTION 31. (a) A member of the Employees Retirement System of Texas who is an appointed officer of the 74th House of Representatives of the State of Texas, as determined by the house journal, who has at least 28 years of service credit in the retirement system, and who has attained the age of 50 is eligible to make an election under this section.

(b) A member of the Employees Retirement System of Texas who has at least 18 years of service creditable in the retirement system, who has served as the executive head of a legislative service agency, and who has attained the age of 50 is eligible to make an election under this section.

(c) An election under this section must be made in writing and filed with the Employees Retirement System of Texas before January 1, 1996, and is irrevocable after filing. A person who makes an election under Subsection (a) must retire on the first effective retirement date that occurs after the date of filing. After the filing of an election under this section, the retirement system shall consider all the service credit established by the person who makes the election, including service credit established after the date the election is filed, as if it were performed as a member of the elected class of membership.

SECTION 32. (a) The board of trustees of the Employees Retirement System of Texas may increase annuities based on service credited in the employee class of membership for retirements or deaths that occur after August 31, 1995, and before September 1, 1996, if the retirement system's actuary certifies that the adjustment will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years.

(b) The rate of an adjustment under this section may not exceed the rate provided under Section 28 of this Act. The board may not adopt an adjustment under this section before September 1, 1996. An adjustment under this section does not apply to an annuity until the first anniversary of the beginning of payments of the annuity.

(c) The board of trustees shall pay annuities adjusted as provided by this section in the same manner as annuities increased under Section 28 of this Act are paid.

SECTION 33. Subchapter A, Chapter 830, Government Code, is amended by adding Section 830.0011 to read as follows:

Sec. 830.0011. DEFINITION. Notwithstanding Section 821.001, in this chapter "retirement system" means the Teacher Retirement System of Texas or the Employees Retirement System of Texas, as the context requires.

SECTION 34. Section 830.106, Government Code, is amended to read as follows:

Sec. 830.106. ELIGIBILITY FOR RESUMPTION OF MEMBERSHIP. A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

(1) terminates employment covered by the optional retirement program; and

(2) becomes employed in the public school system or with a state agency in a position that is not eligible for participation in the optional retirement program.

SECTION 35. Subchapter B, Chapter 832, Government Code, is amended by adding Section 832.102 to read as follows:

Sec. 832.102. RESUMPTION OF FULL-TIME JUDICIAL SERVICE.

(a) A retiree who resumes service as a judicial officer other than by appointment or assignment described in Section 832.101 may not rejoin or receive credit in the retirement system for the resumed service.

(b) The retirement system shall suspend annuity payments to a retiree who resumes service described by this section. A suspension of payments begins on the date a retiree takes the oath of office and ends on a date when:

(1) the retiree no longer holds the office; and

(2) the retiree, or the retiree's beneficiary if the retiree has died, has applied to the retirement system for resumption of payments.

(c) Time during which annuity payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.

(d) Before a retiree takes the oath of office for a position as a judicial officer other than under appointment or assignment described by Section 832.101, the retiree shall notify the retirement system in writing of the resumption of office and the projected dates of service.

SECTION 36. Subchapter B, Chapter 833, Government Code, is amended by adding Section 833.1031 to read as follows:

Sec. 833.1031. MILITARY SERVICE CREDIT GOVERNED BY UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT. The retirement system may adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. Section 4301 et seq.) and other federal laws affecting the crediting of military service.

SECTION 37. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.1031 to read as follows:

Sec. 838.1031. MILITARY SERVICE CREDIT GOVERNED BY UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT. The retirement system may adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. Section 4301 et seq.) and other federal laws affecting the crediting of military service.

SECTION 38. Sections 3(a)(2) and (5), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(2) "Annuitant" shall mean an officer or employee who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E of Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code;

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C, Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit, whose last state employment prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program [the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, the Texas Higher Education Coordinating Board, or an institution of higher education];

(C) the optional retirement program established by Chapter 830, Government Code, and either receives an annuity or is eligible to receive an annuity under that program, if the person's last state employment before retirement, including employment by a public community/junior college, was as an ~~officer or~~ employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program and if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled as determined by the Employees Retirement System of Texas [the Texas Higher Education Coordinating Board or an institution of higher education]; or

(D) any other federal or state statutory retirement program to which an institution of higher education has made employer contributions, if the employee has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit~~], and if the person either:~~

~~[(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or~~

~~[(ii) is disabled].~~

(5)(A) "Employee" shall mean any appointive or elective ~~[state]~~ officer or employee in the service of the State of Texas, including an employee of an institution of higher education:

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Subtitle B, D, or E; ~~or Chapter 803, Title 8, Government Code;~~

(ii) who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Subtitle C, Title 8, Government Code, or pursuant to Chapter 803, Government Code, and whose last employment with the state prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program [the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, the Texas Higher Education Coordinating Board, or an institution of higher education, or who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Texas Higher Education Coordinating Board, or an institution of higher education, and if the person either:

[(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

[(b) is disabled];

(iii) who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code, if the person's last state employment before retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program, and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled as determined by the Employees Retirement System of Texas;

(iv) [(ii)] who receives [his] compensation for services rendered to the State of Texas, other than an employee of an institution of higher education described by this subdivision, on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state;

(v) [(iii)] who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by

the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act;

(vi) [(iv)] who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act;

(vii) [(v)] who is a member of the governing body of an institution of higher education, as that term is defined by this Act [Section 61.003, Education Code, including subsequent amendments to that section];

(viii) [(vi)] who is a member of the State Board of Education;

(ix) [(vii)] who receives compensation for services rendered to an institution of higher education on a warrant or check issued pursuant to a payroll certified by an institution of higher education or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas; or

(x) [(viii)] who receives compensation for services rendered to an institution of higher education as provided by this subdivision but is not permitted to be a member of the Teacher Retirement System of Texas because the person is solely employed by an institution of higher education that as a condition of employment requires the person to be enrolled as a student in an institution of higher education in graduate-level courses and who is employed by the institution at least 20 hours a week.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

SECTION 39. Section 4B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (a-1) and amending Subsection (c) to read as follows:

(a-1) If the executive director determines that a participant has obtained coverage under any program provided under the authority of this Act through the use of any material misrepresentation or fraud or has fraudulently induced the extension of coverage by making a material misrepresentation or by supplying false information on any application for coverage or related documentation or in any communication, the executive director may rescind the coverage to the date of the inception of the coverage or to the date of the fraudulent act or material misrepresentation, deny any claim arising out of the fraudulently induced coverage, or both. Remedies available to the executive director under this subsection are in addition to and independent of any expulsion action that may be instituted under Section 13A of this Act. A decision of the executive director under this subsection may be appealed to the trustee as provided by Subsection (c) of this section.

(c) A decision by the executive director under Subsection (a) or (a-1) of this section may be appealed only to the trustee. An appeal to the trustee is a contested case under the administrative procedure law, Chapter 2001, Government Code. Standing to pursue an administrative appeal under this section is limited to employees, annuitants, and covered

dependents participating in the Texas employees uniform group insurance program or, after the death of a participant, to the participant's estate, personal representative, heirs at law, or designated beneficiary [Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)].

SECTION 40. Section 5(f), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(f) The trustee, in its sole discretion and in accordance with the requirements of this section, shall determine those plans of coverages for which the trustee does not intend to purchase insurance and which it intends to provide directly from the Employees Life, Accident, and Health Insurance and Benefits Fund. Any plan of coverages for which the trustee does not purchase insurance but provides under this Act on a self-funded basis is exempt from any other insurance law unless the law expressly applies to this plan or this Act. The trustee shall make an estimate of the unrestricted balance of the fund. Unless such estimated unrestricted balance is equal to at least 10 percent of the total benefits expected to be provided directly from the fund as a result of claims incurred during the fiscal year, the trustee shall include in the contributions required the amount necessary to establish an unrestricted balance in the fund of not less than 10 percent. The unrestricted balance shall be placed in a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the program.

SECTION 41. Section 13(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(c) Unless expelled from the program under Section 13A of this Act, each part-time employee and each employee of an institution of higher education who is described by Section 3(a)(5)(A)(viii) of this Act is eligible for participation in the group programs provided under this Act upon execution of appropriate payroll deduction authorization for the required payment of premiums. An institution of higher education shall, at the time of employment, notify each employee of the institution who is described by Section 3(a)(5)(A)(viii) of this Act of the employee's eligibility to participate in the group programs provided under this Act.

SECTION 42. Section 13A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 13A. EXPULSION FROM GROUP INSURANCE PROGRAM.

(a) After notice and hearing as provided by this section, the trustee may expel from participation in the Texas employees uniform group insurance program any employee, annuitant, or dependent who submits a fraudulent claim or application for coverage under or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits plan offered under the program.

(b) On receipt of a complaint or on its own motion, the trustee may call and hold a hearing to determine whether ~~or not~~ an employee, annuitant, or dependent has submitted a fraudulent claim or application for coverage under or has defrauded or attempted to defraud any health

maintenance organization or insurance or benefits plan offered under the Texas employees uniform group insurance program.

(c) A proceeding under this section is a contested case under the administrative procedure law, Chapter 2001, Government Code [Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)].

(d) At the conclusion of the hearing, if the trustee issues a decision that finds that the accused employee, annuitant, or dependent submitted a fraudulent claim or application for coverage or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits plan offered under the Texas employees uniform group insurance program, the trustee shall expel the employee, annuitant, or dependent from participation in the program.

(e) An appeal of a decision of the trustee under this section is under the substantial evidence rule.

(f) An employee, annuitant, or dependent expelled from the Texas employees uniform group insurance program may not participate in a health maintenance organization or be insured under [by] any [health] insurance or benefits plan offered by the program for a period determined by the trustee of not more than five years from the date the expulsion from the program takes effect.

SECTION 43. Section 14(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee shall use the amount appropriated for employer contributions in accordance with Section 15 of this Act ~~[and Subsection (a-1) of this section]~~ to fund the basic coverage. The trustee may equitably allocate to each health benefits plan the employer contributions that would be required to fund basic health coverage for participants in the plans to the extent funds are available. In allocating the employer contributions among plans, the trustee shall consider the relevant risk characteristics of each plan's enrollment, including demographic variations in the use and cost of health care and the prevailing cost patterns in the area in which the plan operates. The allocation must be reasonable and set in a manner which assures employees a fair choice among health benefit plans providing a basic plan. The contribution set for each employee shall be within the total amount appropriated in the General Appropriations Act.

SECTION 44. Section 609.507, Government Code, is amended to read as follows:

Sec. 609.507. FINANCIAL INSTITUTION AS QUALIFIED VENDOR.
[(a)] Each bank or savings and loan association that is a qualified vendor is not required to comply with Chapter 404 with regard to deferrals and investment income, but shall comply with plan rules that deal with vendors and investment products [shall:

~~[(1) treat deferred amounts and investment income as state funds; and~~

~~[(2) comply with Chapter 404.~~

~~[(b) The state treasurer shall monitor each bank or savings and loan association that is a qualified vendor for compliance with Chapter 404.~~

~~The state treasurer shall immediately notify the board of trustees of a violation of that chapter that the treasurer observes.~~

~~[(c) The board of trustees is entitled to rely on the supervision of the state treasurer].~~

SECTION 45. The following provisions are repealed:

- (1) Section 814.107(h), Government Code;
- (2) Section 815.108, Government Code;
- (3) Section 815.403(g), Government Code; and
- (4) Section 14(a-1), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).

SECTION 46. (a) The Employees Retirement System of Texas shall recompute each annuity that is based on the service of a person who has retired under Section 814.1071, Government Code, to include an amount, proportional to the amount authorized for each year of credit under Section 814.107, Government Code, for each whole month of credit as a law enforcement or custodial officer that was not used in the original computation of the annuity.

(b) The increases in annuities provided by this section are payable, from the law enforcement and custodial officer supplemental retirement fund, beginning with the first payments of the annuities that become due after the month in which the retirement system's actuary certifies to the board of trustees that the increases will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years.

SECTION 47. The Judicial Retirement System of Texas Plan One shall suspend payments of an annuity to any retiree who before the effective date of this Act resumed service for which a suspension is required by Section 832.102, Government Code, as added by this Act. The suspension shall apply beginning with annuity payments that become due in the month after the month in which this section takes effect and ending as provided by Section 832.102.

SECTION 48. If the Employees Retirement System of Texas receives a certified copy of a divorce decree that was entered before August 28, 1995, and that purports to revoke or order the revocation of a designation of a beneficiary by a retiree of the retirement system, on receipt of a written directive from the retiree, the retirement system shall change its records and, as appropriate, begin payments of any recomputed annuity, as provided by Section 814.008, Government Code, as added by this Act, or Section 814.1081, Government Code, as amended by this Act, as if the decree were entered after that date.

SECTION 49. The change in law made by this Act to Section 13(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), applies only to persons who become employed for the first time by a particular institution of higher education during the 1995-1996 or a subsequent academic year.

SECTION 50. The change in law made by this Act in Section 813.506(b), Government Code, applies only to persons who become employed by the Texas Department of Criminal Justice on or after September 1, 1995.

SECTION 51. This Act takes effect August 28, 1995, except Section 8, which takes effect September 1, 1995.

SECTION 52. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1863**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 23, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1863** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI	HILDERBRAN
ARMBRISTER	DENNY
ELLIS	MAXEY
MONCRIEF	OLIVEIRA
PATTERSON	THOMPSON
On the part of the Senate	On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on State Affairs might consider the following bills upon adjournment today:

**H.B. 1711
H.B. 1342
H.B. 1051
H.B. 272
H.B. 1330**

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Brown and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Natural Resources might consider the following bills upon adjournment today:

H.B. 3173

H.B. 3221

HOUSE RESOLUTION ON FIRST READING

The following resolution received from the House was read first time and referred to the committee indicated:

H.C.R. 209, To Committee on Administration.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Harris and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Administration might consider **H.C.R. 209** tomorrow.

MEMORIAL RESOLUTIONS

S.C.R. 168 - By Ratliff: In memory of State Trooper Timothy Wade McDermott of Marshall.

S.R. 1180 - By Turner: In memory of Gentry Paul Neubauer of Lovelady.

CONGRATULATORY RESOLUTIONS

S.C.R. 167 - By Barrientos: Congratulating the O. Henry Museum of Austin on its 18th Annual World Championship Pun-Off.

S.R. 1174 - By Turner: Commending Janis Wiggins of Crockett for her contributions to the educational system of Texas.

S.R. 1175 - By Turner: Commending Jim Lover of Latexo for his contributions to the educational system of Texas.

S.R. 1176 - By Turner: Commending Linda Sheppard of Kennard for her contributions to the educational system of Texas.

S.R. 1177 - By Turner: Commending James Howell of Crockett for his contributions to the educational system of Texas.

S.R. 1178 - By Turner: Commending Debbie Rollo of Lovelady for her contributions to the educational system of Texas.

S.R. 1179 - By Turner: Congratulating Mr. and Mrs. Jake Stephens of Robertson County on their 50th wedding anniversary.

S.R. 1181 - By Turner: Commending Jeanette Crell of Houston County for her contributions to the educational system of Texas.

S.R. 1182 - By Barrientos: Recognizing the Westview Middle School Olympiad Team on receiving the state championship title in the Science Olympiad.

S.R. 1183 - By Brown: Congratulating Julia Marie Lightner Johnson on the occasion of her retirement after 22 years of service in the Texas House of Representatives and the Texas Senate.

S.R. 1185 - By Madla: Recognizing the West Side Substation of the San Antonio Police Department.

S.R. 1190 - By Truan: Congratulating the Gregory-Portland High School academic team for winning first place in the University Interscholastic League Conference 4A Meet.

S.R. 1191 - By Truan: Commending the students and teachers of Kleberg Elementary School of Kingsville for their good citizenship.

ADJOURNMENT

On motion of Senator Ratliff, the Senate at 6:53 p.m. adjourned until 10:00 a.m. tomorrow.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 24, 1995

STATE AFFAIRS — H.B. 228, H.B. 2429, H.B. 2180, H.B. 3021, H.C.R. 178, H.C.R. 94

ECONOMIC DEVELOPMENT — H.B. 2065

CRIMINAL JUSTICE — H.B. 1433

HEALTH AND HUMAN SERVICES — C.S.H.B. 2644

STATE AFFAIRS — C.S.H.B. 1719

JURISPRUDENCE — C.S.H.B. 433, H.B. 1574 (Amended), H.B. 170, H.B. 2085, H.B. 387, H.B. 3169, H.B. 3207, H.B. 2370, H.B. 647, H.B. 3227, H.B. 3121, H.B. 1388, H.B. 2331, H.B. 2330, H.B. 1879, H.B. 3222, H.B. 2405, H.B. 2398, H.B. 2098, H.B. 2029, H.B. 692, H.B. 1195

ECONOMIC DEVELOPMENT — H.B. 1425, H.B. 2593, H.B. 3200

SENT TO GOVERNOR

(May 23, 1995)

S.C.R. 58	S.B. 267	S.B. 737	S.B. 1061
S.C.R. 142	S.B. 329	S.B. 741	S.B. 1062
S.C.R. 143	S.B. 378	S.B. 775	S.B. 1084
S.C.R. 144	S.B. 406	S.B. 793	S.B. 1129
S.C.R. 145	S.B. 443	S.B. 794	S.B. 1136
S.C.R. 151	S.B. 478	S.B. 888	S.B. 1162
S.B. 49	S.B. 489	S.B. 892	S.B. 1173
S.B. 96	S.B. 513	S.B. 935	S.B. 1280
S.B. 118	S.B. 544	S.B. 942	S.B. 1438
S.B. 149	S.B. 570	S.B. 955	S.B. 1512
S.B. 161	S.B. 598	S.B. 982	S.B. 1515
S.B. 209	S.B. 645	S.B. 983	S.B. 1551
S.B. 221	S.B. 691	S.B. 993	S.B. 1604
S.B. 240	S.B. 702	S.B. 1015	S.B. 1622
S.B. 255	S.B. 714	S.B. 1038	S.B. 1628

(May 24, 1995)

S.C.R. 27	S.B. 810	S.B. 1347	S.B. 1479
S.C.R. 87	S.B. 905	S.B. 1356	S.B. 1491
S.C.R. 88	S.B. 921	S.B. 1384	S.B. 1585
S.B. 130	S.B. 979	S.B. 1410	S.B. 1607
S.B. 219	S.B. 981	S.B. 1414	S.B. 1620
S.B. 346	S.B. 1063	S.B. 1420	S.B. 1629
S.B. 397	S.B. 1139	S.B. 1431	S.B. 1645
S.B. 622	S.B. 1262	S.B. 1446	S.B. 1654
S.B. 651	S.B. 1278	S.B. 1470	S.B. 1688
S.B. 661	S.B. 1296	S.B. 1477	S.B. 1693
S.B. 753	S.B. 627		

SEVENTY-NINTH DAY

(Thursday, May 25, 1995)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend John McMullen, First United Methodist Church, Austin, offered the invocation as follows:

God and creator of us all, we gather here who we are and as we are—Republicans and Democrats, liberals and conservatives, city people and country folk, certain people and uncertain people, religious people and not-so-religious people. We gather here faced with the tremendous responsibility to govern—to do the best by and for the people of this state, the people we represent, the people who look to us to offer leadership. Keeping them always in mind, keeping You always in mind, may we do what is right, may we do what is just, may we do what is merciful, and may we work to continue to build this state and this nation. May our trust in You make us trustworthy. And so—gathered who we are and as we are—we commit ourselves and this day's business to Your care, asking Your guidance, Your comfort, and Your strength. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CO-SPONSOR OF HOUSE BILL 2941

On motion of Senator Armbrister and by unanimous consent, Senator Nixon will be shown as Co-sponsor of **H.B. 2941**.

CO-SPONSOR OF HOUSE BILL 2958

On motion of Senator Brown and by unanimous consent, Senator Gallegos will be shown as Co-sponsor of **H.B. 2958**.

CO-AUTHOR WITHDRAWN

Senator Lucio requested the removal of his name as Co-author of **S.B. 953**.

The request was granted.

SENATE RESOLUTIONS ON FIRST READING

The following resolutions were introduced, read first time, and referred to the committees indicated:

S.C.R. 171 by Gallegos Education
Requesting the Texas Senate Committee on Education and the Texas House of Representatives Committee on Public Education to study implementing recommended educational requirements.

S.C.R. 172 by Gallegos Administration
Requesting the Texas Senate Committee on Education and the Texas House of Representatives Committee on Public Education to study recommended educational requirements.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

S.C.R. 38	S.B. 182	S.B. 698	S.B. 1217	S.B. 1554
S.C.R. 124	S.B. 224	S.B. 871	S.B. 1222	S.B. 1601
S.C.R. 146	S.B. 225	S.B. 904	S.B. 1252	S.B. 1632
S.C.R. 147	S.B. 338	S.B. 914	S.B. 1276	S.B. 1647
S.C.R. 148	S.B. 351	S.B. 918	S.B. 1291	S.B. 1657
S.C.R. 149	S.B. 400	S.B. 919	S.B. 1301	S.B. 1658
S.C.R. 158	S.B. 413	S.B. 944	S.B. 1314	S.B. 1670
S.J.R. 7	S.B. 428	S.B. 1017	S.B. 1337	S.B. 1681
S.B. 10	S.B. 472	S.B. 1020	S.B. 1338	S.B. 1691
S.B. 46	S.B. 512	S.B. 1046	S.B. 1357	S.B. 1694
S.B. 47	S.B. 519	S.B. 1076	S.B. 1363	S.B. 1695
S.B. 89	S.B. 525	S.B. 1092	S.B. 1371	S.B. 1701
S.B. 124	S.B. 585	S.B. 1175	S.B. 1397	S.B. 1704
S.B. 126	S.B. 600	S.B. 1177	S.B. 1435	S.B. 1705
S.B. 129	S.B. 601	S.B. 1178	S.B. 1437	S.B. 1709
S.B. 131	S.B. 602	S.B. 1179	S.B. 1514	S.B. 1714
S.B. 133	S.B. 634	S.B. 1182	S.B. 1535	S.B. 1720
S.B. 135	S.B. 636	S.B. 1197	S.B. 1549	

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 39, Relating to the making of a statement to a court and to the defendant by a victim of a criminal offense or the victim's relative or guardian.

S.B. 72, Relating to the release of information kept in vessel and outboard motor ownership records.

S.B. 99, Relating to construction change orders.

S.B. 103, Relating to providing guardianship services and a pooled income trust for incapacitated persons. (As amended)

S.B. 206, Relating to fees and expenses for the services of a peace officer.

S.B. 373, Relating to the continuation, operations, and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel; providing penalties. (As substituted and amended)

S.B. 421, Relating to the transfer of extraterritorial jurisdiction between certain municipalities. (As substituted and amended)

S.B. 520, Relating to eligibility for retirement and benefits under the Texas Municipal Retirement System.

S.B. 560, Relating to disposal of abandoned vehicles.

S.B. 563, Relating to the authority to abolish the position of marshal in a Type B general-law municipality.

S.B. 609, Relating to municipal regulation of pool yard enclosures.

S.B. 680, Relating to the cancellation of and to the filing of a declaration of write-in candidacy in certain elections. (As amended)

S.B. 727, Relating to certain nonprofit corporations that purchase or make student or parent loan notes.

S.B. 733, Relating to regulating the taking, purchase, and sale of certain fish.

S.B. 748, Relating to authorizing certain local governments to accept ownership of conveyed property in certain circumstances. (As amended)

S.B. 780, Relating to temporary justices of the peace.

S.B. 863, Relating to certain conditions of employment for and investigations of fire fighters and police officers in certain municipalities.

S.B. 867, Relating to the use of the advance interest trust fund by the Texas Employment Commission.

S.B. 956, Relating to the conveyance of certain state-owned real property in Bexar County.

S.B. 1013, Relating to complaints against police officers and fire fighters. (As substituted and amended)

S.B. 1016, Relating to the powers of water control and improvement districts.

S.B. 1074, Relating to the operations of a grand jury; providing penalties.

S.B. 1090, Relating to the violation of a court order enjoining a person from engaging in certain organized criminal activity; providing a criminal penalty.

S.B. 1391, Relating to records and seals of notaries public and to qualification as a notary public.

S.B. 1443, Relating to administrative licensing.

S.B. 1485, Relating to the child fatality review team committee and child fatality review teams. (As amended)

S.B. 1546, Relating to persons affected by matters in hearings before the Texas Natural Resource Conservation Commission. (As amended)

S.B. 1660, Relating to agreed orders of the Texas Natural Resource Conservation Commission.

S.B. 1675, Relating to powers and duties of the Health and Human Services Commission. (As substituted and amended)

H.C.R. 173, Urging the United States Congress to extend to noncorporate farmers, entities, and individuals the Internal Revenue Code tax incentive for charitable donations.

H.C.R. 230, Commending the members of the Texas Task Force for Tiltrotor Technology.

H.C.R. 231, Instructing the house enrolling clerk to make technical corrections to **H.B. 2162**.

S.B. 42, Relating to access to criminal history record information by certain organizations providing volunteer services. (As substituted)

S.B. 80, Relating to requiring training in issues concerning sex offender characteristics for certain judicial and law enforcement professionals. (As amended)

S.B. 374, Relating to the review and continuation of certain state agencies subject to the Texas Sunset Act. (As amended)

S.B. 628, Relating to access to pharmaceutical services through certain managed care health plans. (As amended)

S.B. 667, Relating to the disclosure of health and mental health care information by certain providers of health care or mental health care. (As amended)

S.B. 814, Relating to the requirement of commercial licenses to catch, unload, and sell aquatic products. (As substituted and amended)

S.B. 885, Relating to the eligibility for workers' compensation benefits of professional athletes employed by a franchise of the International Hockey League or the National Hockey League. (As substituted)

S.B. 964, Relating to the regulation of driver training; providing a penalty. (As amended)

S.B. 1049, Relating to the Crime Victims' Compensation Act; providing civil and administrative penalties. (As amended)

S.B. 1260, Relating to the use of the general obligation bonding authority of the farm and ranch finance program fund for the Texas agricultural fund within the Texas Agricultural Finance Authority. (As substituted)

S.B. 1302, Relating to the regulation of physician assistants; providing a criminal penalty. (As amended)

S.B. 1303, Relating to the practice of medicine, including the rehabilitation of impaired physicians and the unlicensed practice of medicine; providing a penalty. (As amended)

S.B. 1334, Relating to the relationship between landlords and tenants and to the regulation of residential rental locators; providing penalties. (As amended)

S.B. 1349, Relating to subsequent evidentiary search warrants. (As substituted)

S.B. 1375, Relating to a municipal utility district composed of noncontiguous areas located in the extraterritorial jurisdiction of two municipalities. (As amended)

S.B. 1388, Relating to the creation of a county mass transit authority. (As amended)

S.B. 1428, Relating to abolishing certain state governmental entities. (As substituted and amended)

S.B. 48, Relating to a crime victim's right to appear in person before members of the Board of Pardons and Paroles. (As amended)

S.B. 101, Relating to the payment of an ad valorem tax under protest.

S.B. 134, Relating to the punishment for certain assaults committed by one member of a family against another family member.

S.B. 169, Relating to the interstate placement of and assistance to children; creating offenses and providing penalties. (As substituted)

S.B. 242, Relating to violence prevention and conflict resolution training for use in juvenile probation. (As amended)

S.B. 243, Relating to educating juveniles under the custody of the Texas Youth Commission in violence prevention and conflict resolution.

S.B. 281, Relating to the punishment for the offense of evading arrest or detention and certain civil consequences of using a vehicle to evade arrest or detention. (As substituted)

S.B. 284, Relating to the liability of a peace officer who provides standby assistance to a victim of family violence.

S.B. 336, Relating to notice and cure provisions required for a defaulting purchaser under a contract for deed and to requirements for and loans associated with a contract for deed transaction in certain counties. (As substituted and amended)

S.B. 349, Relating to the payment of a fee to a court clerk in certain criminal cases and a fee for certification by the county clerk. (As amended)

S.B. 437, Relating to requiring a county to report on its expenditure of funds required to be used for highways.

S.B. 494, Relating to the imposition of a lien on certain persons convicted of criminal offenses to secure payment of restitution, fines, or costs. (As amended)

S.B. 569, Relating to the provision of hospice services to inmates and defendants confined in facilities operated by the Texas Department of Criminal Justice. (As amended)

S.B. 647, Relating to the involvement of the Texas Department of Licensing and Regulation in the regulation of water well pump installers. (As amended)

S.B. 675, Providing for the exemption from regulation by the Texas Department of Licensing and Regulation of water well drillers. (As amended)

S.B. 695, Relating to the personnel records of certain law enforcement officers and fire protection personnel; providing a criminal penalty. (As amended)

S.B. 739, Relating to the inspection and certification of elevators in an industrial facility. (As amended)

S.B. 789, Relating to possession and delivery of a child in an emergency without a court order. (As substituted)

S.B. 1037, Relating to the custodians of local government and state agency funds.

S.B. 1227, Relating to the regulation of electric cooperative corporations. (As amended)

S.B. 1232, Relating to a motor vehicle self-insurance program for volunteer fire departments. (As amended)

S.B. 1295, Relating to use of the open market purchase procedure for certain state travel services and to sunseting the General Services Commission's provision of certain travel services. (As substituted)

S.B. 1453, Relating to the electronic availability of legislative information through the Internet. (As amended)

S.B. 1487, Relating to prohibiting the consideration of race or ethnicity as a factor in adoption or foster care placements. (As amended)

S.B. 1509, Relating to the establishment of colonia self-help centers in certain counties. (As substituted and amended)

S.B. 1545, Relating to the seizure and sale for delinquent ad valorem taxes of abandoned real property in a municipality. (As amended)

S.B. 1606, Relating to the creation, administration, powers, duties, operation, and financing of the Travis County Municipal Utility District No. 3, Travis County Municipal Utility District No. 4, Travis County Municipal Utility District No. 5, Travis County Municipal Utility District No. 6, Travis County Municipal Utility District No. 7, Travis County Municipal Utility District No. 8, and Travis County Municipal Utility District No. 9.

S.B. 1671, Relating to the validation of governmental acts and proceedings by municipalities.

S.B. 1674, Relating to the authority of the board of directors of the Tarrant County Water Control and Improvement District No. 1 to provide certain benefits.

S.B. 15, Relating to the prosecution, punishment, and creation of certain criminal offenses and to the sentencing of and facilities for housing certain defendants convicted of criminal offenses. (As substituted and amended)

S.B. 673, Relating to health care, including powers and duties of the center for rural health initiatives, powers and duties of registered nurses and physician assistants, managed health care plans for certain inmates, and health facilities and services for the elderly or disabled. (As substituted and amended)

S.B. 1683, Relating to the collection, management, and recycling of used oil and used oil filters; providing criminal penalties. (As substituted and amended)

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

SENATE BILL 1502 WITH HOUSE AMENDMENT

Senator Lucio called **S.B. 1502** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **S.B. 1502** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of the practice of cosmetology.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (5) to read as follows:

(5) "Member" means a member of the commission appointed by the governor.

SECTION 2. Section 10(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for an operator license must be at least 17 [~~16~~] years of age, have completed the seventh grade or its equivalent, and have completed 1,500 hours of instruction in a licensed beauty culture school or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a public school vocational program.

SECTION 3. Section 11(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for a manicurist license must be at least 17 [~~16~~] years of age, have completed the seventh grade or its equivalent, and have completed 600 [~~250~~] hours of instruction in manicuring through a training program approved by the commission.

SECTION 4. Section 13(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for a specialty certificate must be at least 17 [~~16~~] years of age, have completed the seventh grade or its equivalent, and have the necessary requisites as determined by the commission in the particular specialty in which certification is sought, including training through a training program approved by the commission.

SECTION 5. Section 13A(b), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for a facialist specialty license must be at least 17 [~~16~~] years of age, have completed the seventh grade or its equivalent, and have the necessary requisites as determined by the commission in the facialist specialty.

SECTION 6. Sections 21(b), (h), and (i), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An applicant for a private beauty culture school license must submit an application on a form prescribed by the commission. Each application must be verified by the applicant and must contain:

(1) a detailed floor plan of the school building divided into two [~~three~~] separate areas, one for instruction in theory and one clinic work area [~~one for practice work of senior students, and one for practice work of juniors~~]; and

(2) a statement that the building is fireproof and of permanent type construction, contains a minimum of 3,500 square feet of floor space, with separate restrooms for male and female students, and contains or will contain before classes commence the equipment established by rule of the commission as sufficient to properly instruct a minimum of 50 students.

(h) If a student who begins a course of training that is scheduled to run not more than 12 months withdraws from the course or is terminated from the course by the school, the private beauty culture school may retain 100 percent of the [~~\$100 in~~] tuition and fees paid by that student and is not obligated to refund any additional outstanding tuition if the student withdraws or is terminated during the last 50 percent of the course. If the student withdraws or is terminated before the last 50 percent of the course begins, the school shall refund the following percentages of any outstanding tuition:

(1) for withdrawal or termination occurring during the first week or first one-tenth of the course, whichever is less, 90 percent;

(2) for withdrawal or termination occurring after the first week or first one-tenth of the course, whichever is less, but within the first three weeks of the course, 80 percent;

(3) for withdrawal or termination occurring after the first three weeks of the course but not later than the completion of the first 25 percent of the course, 75 percent; and

(4) for withdrawal or termination occurring not later than the completion of the second 25 percent of the course, 50 percent.

(i) For students voluntarily withdrawing or terminating after 50 percent of the course has been completed, the school must allow that student to reenter at any time during the 48-month period following the date of withdrawal or termination.

SECTION 7. Section 21A, Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended by adding Subsection (l) to read as follows:

(l) Section 403.094(h), Government Code, does not apply to the private beauty culture school tuition protection fund.

SECTION 8. Section 22(a), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The holder of a private beauty culture school license shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours one ~~[not less than two]~~ full-time instructor ~~[instructors]~~ licensed under this Act for each 25 students in attendance ~~[- except that one instructor will be sufficient whenever the student enrollment drops below 15];~~

(3) maintain a daily record of attendance of students;

(4) establish regular class and instruction hours and grades, and hold examinations before issuing diplomas;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than 600 ~~[250]~~ hours instruction for a complete course in manicuring;

(7) require no student to work or be instructed or receive credit for more than 48 ~~[eight]~~ hours of instruction in any one ~~[day or for more than six days in any one]~~ calendar week;

(8) maintain a copy of its curriculum in a conspicuous place and verify that this curriculum is being followed as to subject matter being taught; and

(9) submit to the executive director the name of each student within 10 days after enrollment in the school and notify the executive director of the withdrawal or graduation of a student within 10 days of the withdrawal or graduation.

SECTION 9. Section 26(c), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A person holding a beauty shop or specialty shop license may not employ a person as an operator or specialist or lease or rent to a person who acts as an operator or specialist who has not first obtained a license or certificate under this Act or who has not first obtained a license or certificate under the law regulating barbers.

SECTION 10. Section 40(a), Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any person who violates this Act, except Section 31 of this Act, is guilty of a misdemeanor, and on conviction is punishable by a fine of not less than \$100 [~~\$25~~] nor more than \$300 [~~\$200~~].

SECTION 11. This Act takes effect September 1, 1995, and applies only to a person who applies for a license or certificate on or after that date. An application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Lucio moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 1502** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Harris, Madla, Brown, and Gallegos.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 45 ADOPTED

Senator Shapiro called from the President's table the Conference Committee Report on **S.B. 45**. The Conference Committee Report was filed with the Senate on Tuesday, May 23, 1995.

On motion of Senator Shapiro, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 707 ADOPTED

Senator Rosson called from the President's table the Conference Committee Report on **S.B. 707**. The Conference Committee Report was filed with the Senate on Tuesday, May 23, 1995.

On motion of Senator Rosson, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1646 WITH HOUSE AMENDMENT

Senator Madla called **S.B. 1646** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **S.B. 1646** by striking Section 3 of the bill.

The amendment was read.

Senator Madla moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 1646** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Lucio, Luna, Ellis, and West.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 677 ADOPTED**

Senator Bivins called from the President's table the Conference Committee Report on **H.B. 677**. The Conference Committee Report was filed with the Senate on Tuesday, May 23, 1995.

On motion of Senator Bivins, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 1261 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1261** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 1261** as follows:

- (1) On page 2, line 21, delete "is".
- (2) On page 2, line 21, before the word "retired" insert "or bonds refunding the district's bonded indebtedness are".
- (3) On page 3, line 7, strike "shall have" and substitute "has".

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **S.B. 1261**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

GUESTS PRESENTED

Senator Brown was recognized and introduced to the Senate Mike Nixon of Houston and Chad Howard of Sugar Land, son of Representative Charlie Howard. Chad and Mike are serving today as Honorary Senate Pages.

The Senate welcomed its guests.

COMMITTEE SUBSTITUTE HOUSE BILL 1305 ON THIRD READING

Senator Armbrister moved that the regular order of business be suspended and that **C.S.H.B. 1305** be placed on its third reading and final passage.

C.S.H.B. 1305, Relating to the continuation and functions of the Texas Racing Commission and to the transfer of certain commission functions to the Texas Department of Commerce; providing penalties.

The motion prevailed by the following vote: Yeas 21, Nays 9.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Harris, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Patterson, Rosson, Sims, Truan, Wentworth, West, Zaffirini.

Nays: Galloway, Haywood, Leedom, Nelson, Nixon, Ratliff, Shapiro, Sibley, Turner.

Absent: Whitmire.

The bill was read third time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1305** on third reading in proposed Section 16.19, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as added by the Armbrister amendment (Floor Amendment No. 9) by striking "Sec. 16.19. APPLICABILITY TO SIMULCAST FACILITY. This Article does not apply to a simulcast facility." and substituting "Sec. 16.19. APPLICABILITY TO SIMULCASTING. This Article does not apply to simulcasting."

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

The bill as again amended was finally passed by a viva voce vote.

RECORD OF VOTES

Senators Galloway, Haywood, Leedom, Nelson, Nixon, Ratliff, Shapiro, Sibley, and Turner asked to be recorded as voting "Nay" on the final passage of the bill.

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
HOUSE BILL 2644 ON SECOND READING**

Senator Patterson moved to suspend the regular order of business, Senate Rule 5.14(a), and all necessary rules to take up for consideration at this time:

C.S.H.B. 2644, Relating to licensing and Medicaid certification requirements for certain nursing facilities and related penalties and dispute resolution.

The motion was lost by the following vote: Yeas 22, Nays 6. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Bivins, Cain, Galloway, Harris, Haywood, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Wentworth, Zaffirini.

Nays: Ellis, Gallegos, Moncrief, Truan, Turner, West.

Absent: Brown, Henderson, Whitmire.

HOUSE BILL 982 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 982, Relating to the children's trust fund and the Children's Trust Fund of Texas Council operating fund.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 982** as follows:

(1) Between SECTIONS 5 and 6 of the bill (committee printing, page 2, between lines 21 and 22), insert the following appropriately numbered section:

SECTION _____. If **H.B. 3050** is enacted by the 74th Legislature at its regular session and becomes law, in addition to other amounts appropriated for the fiscal biennium ending August 31, 1997, an amount not to exceed \$250,000 in the fiscal year ending August 31, 1996, and an amount not to exceed \$750,000 in the fiscal year ending August 31, 1997, are hereby appropriated to the Children's Trust Fund of Texas Council from receipts to the Children's Trust Fund of Texas Council Operating Fund No. 541 for the purpose of implementing this Act. The council is limited to a total number of full-time-equivalent positions not to exceed seven in the fiscal year ending August 31, 1996, and seven in the fiscal year ending August 31, 1997.

(2) Renumber sections of the bill appropriately.

The amendment was read and was adopted by a viva voce vote.

Senator Turner offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 982** as follows:

Add a new SECTION 6 to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 6. The Human Resources Code is amended by adding Section 74.0101 to read as follows:

Sec. 74.0101. LOCAL COMMUNITY PARTNERSHIP BOARDS. (a) To encourage community efforts to preserve family unity, facilitate the protection of children from abuse and neglect, and improve service delivery at the local level, the council shall develop a matching grant program to foster the creation of local community partnership boards for child and family services. The council may annually solicit applications for new, local community partnership boards and shall on a matching-funds basis distribute to new and existing local boards grant funds obtained through interagency contract from the Health and Human Services Commission. The council may accept only one application from each county. An application submitted under this Section must demonstrate that the proposed board is a collaborative initiative among entities contributing significant funding for child and family services within the county. The council shall adopt rules regarding local commission membership, matching grant criteria, certification of local commissions, technical assistance, accountability, and powers and duties of local commissions.

(b) The Health and Human Services Commission shall transfer to the council through interagency contract funds appropriated by the legislature for local boards or commissions relating to child and family services for the purpose of funding grants under this Section. The council may retain up to two percent of funds appropriated for grants under this Section for the administration of the grant program and technical assistance for local community partnership boards.

(c) Local community partnership boards established under this Section shall promote volunteer involvement in and coordination of child and family services, but may not directly provide services. Each local community partnership board shall submit to the council a local plan which may include local budgetary priorities and proposals for alternative delivery systems. Local boards may apply for matching grants to contract for child and family services. A local board commission shall have all powers necessary for effective operation. Members of local boards shall include, at a minimum, parents, representatives of business, religious and civic organizations, and elected officials. A local community partnership board established under this Section is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code. A member of a local community partnership board established under this Section is not liable for civil damages for any act performed in good faith in the execution of duties as a commission member.

The amendment was read.

Senator Shapiro moved to table Floor Amendment No. 2.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

Nays: Armbrister, Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Rosson, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 2, the amendment was adopted by the following vote: Yeas 17, Nays 14.

Yeas: Armbrister, Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Rosson, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Nixon asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 982 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 982** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Nixon.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Nixon asked to be recorded as voting "Nay" on the final passage of the bill.

STATEMENT OF LEGISLATIVE INTENT

Senator Turner submitted the following statement of legislative intent on **H.B. 982**:

In offering my amendment to **H.B. 982** providing for the creation of local community partnership boards for child and family services, it is my intent that the funds appropriated in the \$5 million contingency rider for **S.B. 574** (authorizing local child and family commissions), 74th Legislature, Regular Session, under the Health and Human Services Commission, would be transferred by interagency contract from the Health

and Human Services Commission to the Children's Trust Fund of Texas Council for the purpose of providing grants to local community partnership boards for child and family services.

TURNER

(Senator Turner in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 433 ON SECOND READING**

Senator Harris asked unanimous consent to suspend the regular order of business, all necessary rules, and Senate Rule 5.14(a) to take up for consideration at this time:

C.S.H.B. 433, Relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children.

There was objection.

Senator Harris then moved to suspend the regular order of business and take up **C.S.H.B. 433** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 5.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Zaffirini.

Nays: Barrientos, Gallegos, Moncrief, Rosson, Truan.

Absent: West, Whitmire.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Gallegos, Moncrief, Rosson, and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 433 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 433** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, West, Zaffirini.

Nays: Barrientos, Gallegos, Moncrief, Rosson, Truan.

Absent: Whitmire.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Gallegos, Moncrief, Rosson, and Truan asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 76, Authorizing the legislature to intervene in the Ruiz prison case and other cases involving the state correctional system and to employ legal counsel for that purpose.

H.C.R. 78, Encouraging the Texas Department of Transportation and Texas Department of Public Safety to set transportation and safety goals consistent with those recommended by the National Bicycle and Walking Study.

H.C.R. 113, Directing the Texas Department of Transportation to issue "State Judge" plates to Texas Court of Appeal judges, district court judges and magistrates, members of the Administrative Judicial Districts, statutory county court judges, and those judges who preside over special county courts.

H.C.R. 137, Directing the Texas Department of Health, the Blackland Research Center, the Texas A&M University System, and the Lyndon Baines Johnson School of Public Affairs of The University of Texas to study the current role of local governments in providing public health services.

H.C.R. 139, Endorsing the efforts of the Houston International Sports Committee.

H.C.R. 185, Memorializing Congress regarding the National Voter Registration Act.

H.C.R. 207, Urging the Mexican government to prevent Mexican farmers from siphoning water from the Rio Grande.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 1988 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1988, Relating to the insurance rates and policy forms for certain lines of insurance and to certain administrative hearings conducted regarding those rates.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1988** as follows:

Amend SECTION 28 of the bill, proposed Section (2)(b), Article 5.131, Subchapter O, Chapter 5, Insurance Code, by inserting a new sentence after the word "jurisdiction" to read as follows: Sections 3 and 4 of this Subchapter do not apply to the nonrate regulated insurers covered by this Subsection. (Senate committee report, page 10, line 39).

The amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 1988** as follows:

Amend SECTION 28, proposed Article 5.131, Subchapter O, Chapter 5, Insurance Code, by striking the existing Section 6 and inserting the following:

Sec. 6. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 4 or 5 of this article, each rate resulting from the reduction required under Section 3 of this article remains in effect until January 1, 2001. (Senate committee report, page 12, lines 36 through 47).

The amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 1988** as follows:

Amend SECTION 29, proposed Article 21.69, Insurance Code, by striking the existing Subsection (f) and inserting the following:

(f) The statistical agent may provide aggregate historical premium and loss data to its subscribers. (Senate committee report, page 13, lines 28 through 30).

The amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 1988** as follows:

Amend SECTION 28, proposed Section 3, Article 5.131, Subchapter O, Chapter 5, Insurance Code, as follows:

(1) In Subdivision (e), strike the language between "under this section," and "the following reductions," (Senate committee report, page 11, lines 37 through 40).

(2) Strike the existing Subdivision (f) and insert the following:

(f) Any rule or order of the commissioner which determines, approves, or sets a rate reduction under this section and is appealed or challenged shall be and remain in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use the rate reduction provided in the order being appealed or challenged. Such rate reduction shall be lawful and valid during such appeal or challenge. (Senate committee report, page 11, lines 67 through 70).

The amendment was read and was adopted by a viva voce vote.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 1988** by substituting the following for Sec. 4(b) on page 12:

(b) The commissioner is not required to disapprove a filed rate that reflects less than the full amount of the rate reduction imposed by Section 3 of this article if:

(1) the commissioner determines that based on clear and convincing evidence that an insurer will be financially unable in a particular line of insurance to continue writing that line, or

(2) the rate reduction required by Section 3 of this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1988 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1988** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

GUEST PRESENTED

The President introduced to the Senate Representative Curtis Seidlits, Jr., of Sherman.

The Senate welcomed Representative Seidlits.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate a group of third-grade students and their teacher from De Zavala Elementary School of Houston.

The Senate welcomed its guests.

(Senator Lucio in Chair)

COMMITTEE SUBSTITUTE
HOUSE BILL 3111 ON SECOND READING

Senator Sibley asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 3111, Relating to the delivery of health care by certain nonprofit health corporations.

There was objection.

Senator Sibley then moved to suspend the regular order of business and take up **C.S.H.B. 3111** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 2.

Yeas: Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Ratliff, Sibley, Sims, Truan, Wentworth, West, Zaffirini.

Nays: Nelson, Rosson.

Absent: Armbrister, Lucio, Shapiro, Turner, Whitmire.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3111** as follows:

Amend SECTION 1 of the bill by adding a new Section 8 to Art. 21.52F as follows:

Sec. 8. RESTRICTIONS. No part of any appropriation to health related institutions of higher education, or any fees, premiums and third party reimbursement accrued from the operation of such health related institutions, may be used to purchase or lease private physician practice or established medical clinics in areas not designated by the Federal Government as medically underserved areas. For purposes of this Act, premiums and third party reimbursement means fees for service, nominal fees, copayments and other payments for health services; all consideration paid for contracts of health insurance; reimbursement for costs in providing health services from Medicaid, Medicare or any other public assistance program; and, any reimbursement from private health insurance programs.

The amendment was read and failed of adoption by the following vote: Yeas 6, Nays 24.

Yeas: Brown, Leedom, Nelson, Nixon, Rosson, Shapiro.

Nays: Armbrister, Barrientos, Bivins, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Patterson, Ratliff, Sibley, Sims, Truan, Turner, Wentworth, West, Zaffirini.

Absent: Whitmire.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 3111** by striking Section 2(b)(3) and adding a new Section 2(d) as follows:

(d) This article shall not be construed to alter the exceptions set out in Section 26(f), Texas Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Montford and Nelson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3111 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 3111** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Montford, Nelson.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Montford and Nelson asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 175 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 175, Relating to the protection of a public employee who reports a violation of law.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 175 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 175** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Armbrister in Chair)

HOUSE BILL 1718 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business, Senate Rule 5.14(a), and all necessary rules were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1718, Relating to the revision of the open records law.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1718** as follows:

(1) Add three new sections to the bill to be numbered appropriately to read as follows:

SECTION 24. Section 552.024(a), Government Code, is amended to read as follows:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates [relating] to the person's home address, [and] home telephone number, social security number, or that reveals whether the person has family members.

SECTION 25. Section 552.102(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

SECTION 26. Section 552.117, Government Code, is amended to read as follows:

Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, ~~[AND]~~ SOCIAL SECURITY NUMBERS AND PERSONAL FAMILY INFORMATION. Information is excepted from the requirements of Section 552.021 if it is information that relates [relating] to [-

[(+)] the home address, [or] home telephone number, social security number, or that reveals whether the following person has family members:

(1) ~~[(A)]~~ a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(2) ~~[(B)]~~ a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code~~;~~ or

~~[(2) the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice, or the home or employment address or telephone number, name, or social security number of a family member of the employee].~~

(2) In SECTION 11 of the bill, the added Section 552.231(b), Government Code, strike the added Subdivision (4) (committee printing, page 7, lines 61-64) and substitute the following:

"(4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the General Services Commission under Section 552.262; and".

(3) In SECTION 13 of the bill, in the amended Section 552.262(a), Government Code (committee printing, page 8, line 59), between "a" and "percent" strike "50" and insert "25" in lieu thereof.

(4) In SECTION 13 of the bill, in the amended Section 552.262(b), Government Code (committee printing, page 8, lines 63-68), strike "The General Services Commission shall conduct a study to determine reasonable charges for producing information prior to the implementation of rules regarding charges under this subchapter. The study shall be completed not later than September 30, 1996, with full participation of parties, including representatives of county and municipal government and other interested parties."

(5) In SECTION 5, (committee printing, page 4, lines 19-24) delete subsection (d) and reletter subsequent subsections accordingly.

(6) In SECTION 5, Sec. 552.103(f) (committee printing, page 4, line 31) delete "created in anticipation of litigation"

(7) In SECTION 20, Sec. 552.321(f)(2) (committee printing, page 13, line 38) between "(2)" and "the" insert "if the suit is brought against a governmental body as defined by Section 552.003(1)(A)(i)."

(8) Renumber the remaining sections of the bill appropriately.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend H.B. 1718 by inserting the following as Section ____ at page ____, line ____, and renumbering the succeeding sections:

SECTION ____ Amend Chapter 552, Subchapter C, Section 552.113, Government Code, to read as follows:

Sec. 552.113. Exception: Geological or Geophysical Information

(a) Information is excepted from the requirements of Section 552.021 if it is:

(1) an electric log confidential under Subchapter M, Chapter 91, Natural Resources Code; ~~[or]~~

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency~~[-]; or~~

~~(3) confidential under subsections (b) through (e).~~

~~(b) In this subsection:~~

~~(1) "Confidential material" includes all well logs, geological, geophysical, geochemical, and other similar data, including maps and other interpretations thereof filed in the land office;~~

~~(i) in connection with any administrative application or proceeding before the commissioner, the board, any board for lease, or the commissioner's or boards' staff, or~~

~~(ii) in compliance with the requirements of any law, rule, lease, or agreement. Information that is shown to or examined by an employee of the land office, but not retained in the land office, shall not be deemed to be filed with the land office.~~

~~(2) "Basic electric logs" has the same meaning as it has in Chapter 91, Subchapter M, Natural Resources Code.~~

~~(3) "Administrative applications" and "administrative proceedings" include, but are not limited to, applications for pooling or unitization, review of shut-in royalty payments, review of leases or other agreements to determine their validity, review of any plan of operations, review of the obligation to drill offset wells, or an application to pay compensatory royalty.~~

~~(c) Confidential material, except basic electric logs, filed in the land office on or after September 1, 1985, shall be public information and shall be available to the public under Section 552.021 on and after the later of:~~

~~(1) five years from the filing date the confidential material; or~~

~~(2) one year from the expiration, termination, or forfeiture of the lease in connection with which the confidential materials were filed.~~

~~(d) Basic electric logs filed in the land office on or after September 1, 1985, are either public information or confidential material to the same extent and for the same periods provided for the same logs by Chapter 91, Subchapter M, Natural Resources Code. A person may request that a basic electric log that has been filed in the land office be made confidential by filing with the land office a copy of the written request for confidentiality made to the Railroad Commission for the same log.~~

~~(c) The following shall be public information:~~

~~(1) Basic electric logs filed in the land office prior to September 1, 1985; and~~

~~(2) Confidential material, except basic electric logs, filed in the land office prior to September 1, 1985; provided, that subsection (d) shall govern the disclosure of such confidential material filed in connection with a lease that is a valid and subsisting lease on the effective date of this section.~~

(f) Confidential material may be disclosed at any time if the person filing the material, or such person's successor in interest in the lease in connection with which the confidential material was filed, consents in writing to its release. A party consenting to the disclosure of confidential material may restrict the manner of disclosure and the person or persons to whom such disclosure may be made.

(g) Notwithstanding the confidential nature of the material described in this subsection, the material may be used by the land office in the enforcement, by administrative proceeding or litigation, of the laws governing the sale and lease of public lands and minerals, the regulations of the land office, the board, or of any board for lease, or the terms of any lease, pooling or unitization agreement, or any other agreement or grant.

(1) An administrative hearings officer may order that confidential material introduced in an administrative proceeding remain confidential until the proceeding is finally concluded, or for the period provided in subsection (d), whichever is later.

(2) Confidential material examined by an administrative hearings officer during the course of an administrative proceeding for the purpose of determining its admissibility as evidence shall not be deemed to have been filed in the land office to the extent that the confidential material is not introduced into evidence at the proceeding.

(h) Nothing in this section shall prevent a person from asserting that any confidential material is exempt from disclosure as a trade secret or commercial information under Section 552.110, or under any other basis permitted by law.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Sibley asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 2.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1718 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1718** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 3028 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3028, Relating to security deposits and application deposits provided by residential tenants and prospective residential tenants and lease obligations of certain successor landlords; providing a civil penalty.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend SECTION 5 of **H.B. 3028** as follows:

by deleting Section 92.333(b)

by deleting the phrase "on or before the required date" in Section 92.333(c), and

by deleting Section 92.334(b)

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Harris asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 1.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 3028** as follows:

On page 1, lines 31-37, (committee printing) delete subsection (d).

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Harris asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 2.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Harris asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 3028 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 3028** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Harris.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Harris asked to be recorded as "Present-not voting" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2569 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2569, Relating to the investigation of child abuse and the protection of the interests of a child who is the subject of a child abuse investigation or a suit affecting the parent-child relationship or who is under the jurisdiction of the Department of Protective and Regulatory Services; providing penalties.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2569** as follows:

(1) In SECTION 2 of the bill, in added Section 261.301(f), Family Code (page 1, line 41, committee printing), strike "Notwithstanding any other provision of this chapter, an" and substitute "An".

(2) In SECTION 2 of the bill, in added Section 261.301(g), Family Code, after the period (page 1, line 50, committee printing), insert "The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Subsection (f).".

(3) In SECTION 3 of the bill, in the introductory language for that section strike "Sections 261.312 and 261.313" and substitute "Section 261.312" (page 1, line 53, committee printing).

(4) In SECTION 3 of the bill, strike added Section 261.312, Family Code (page 1, lines 55-62, committee printing).

(5) In SECTION 3 of the bill, in added Section 261.313, Family Code (page 1, line 63, committee printing), strike "Sec. 261.313." and substitute "Sec. 261.312.".

(6) In SECTION 3 of the bill, in added Section 261.313(d), Family Code, after the period (page 2, line 27, committee printing), insert "This section does not require a law enforcement agency to divulge information to a review team that the agency believes would compromise an ongoing criminal case, investigation, or proceeding.".

(7) In SECTION 4 of the bill, in added Section 262.1015, Family Code, strike Subsection (a) (page 2, lines 34-40, committee printing) and substitute the following:

(a) If the department determines after an investigation that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, the department shall file a petition for the removal of the alleged perpetrator from the residence of the child rather than attempt to remove the child from the residence.

(8) In SECTION 4 of the bill, in added Section 262.1015, Family Code, strike Subsection (b) (page 2, lines 41-49, committee printing) and substitute the following:

(b) A court may issue a temporary restraining order in a suit by the department for the removal of an alleged perpetrator under Subsection (a) if the department's petition states facts sufficient to satisfy the court that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse;

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing;

(3) the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child; and

(4) the issuance of the order is in the best interest of the child.

(9) In SECTION 4 of the bill, in added Section 262.1015(d), Family Code, strike the first sentence of that subsection (page 2, lines 54-55, committee printing), and substitute "A temporary restraining order under this section expires not later than the 10th day after the date the order was rendered.".

(10) In SECTION 4 of the bill, in added Section 262.1015, Family Code, strike Subsection (g) (page 3, lines 4-9, committee printing), and substitute the following:

(f) A person commits an offense if, in violation of a court order under this section, the person returns to the residence of the child the person is alleged to have abused. An offense under this subsection is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this subsection.

(11) In SECTION 11 of the bill, in added Section 107.006(c), Family Code, at the end of the subsection, after the period (page 5, line 25, committee printing), insert "The court shall promptly rule on an objection raised under this subsection and shall order the removal of the guardian ad litem or attorney ad litem if the court finds that the objection is reasonable.".

The amendment was read and was adopted by a viva voce vote.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2569** by inserting the following appropriately numbered sections to read as follows and by renumbering sections of the bill appropriately:

SECTION ____ . Section 74.003, Human Resources Code, is amended to read as follows:

Sec. 74.003. **POWERS AND DUTIES.** (a) The council shall:

(1) develop a state plan for expending funds for child abuse and neglect prevention programs that includes an annual [a] schedule of transfers of trust fund money to the operating fund ~~[through 1996 to assure that there is no decline in the amount of grant money available in 1997];~~

(2) develop eligibility criteria for applicants for grants to fund child abuse and neglect prevention programs;

(3) establish grant application procedures;

- (4) establish funding priorities for child abuse and neglect prevention programs;
 - (5) establish guidelines relating to grant amounts;
 - (6) establish guidelines to ensure fair distribution of grants between rural and urban areas of the state;
 - (7) develop procedures for evaluating grant applications;
 - (8) review grant proposals submitted to the council and approve or deny those grants;
 - (9) monitor the expenditure of funds for child abuse and neglect prevention programs;
 - (10) submit an annual report to the governor and the legislature;
- and
- (11) adopt rules and employ necessary staff to implement this chapter.

(b) The council may:

- (1) apply for and receive funds made available by the federal or state government or by another public or private source, which funds may be designated and expended for administrative purposes and [or] for grants for child abuse and neglect prevention programs, and which may be deposited in either the trust fund or the operating fund, as appropriate; and
- (2) solicit donations for child abuse prevention programs.

SECTION _____. Section 74.005, Human Resources Code, is amended to read as follows:

Sec. 74.005. ADMINISTRATIVE AND OTHER COSTS. (a) Administrative costs during any fiscal year may not exceed an amount equal to 50 percent of the interest credited to [10 percent of the maximum amount of funds the council may transfer from] the trust fund during the preceding [a] fiscal year [under Section 74.006(c) or under Section 74.007(b)].

(b) Funds expended under a special project grant from a nongovernmental source or a governmental source [designated] for public education or public awareness may not be counted as administrative costs for the purposes of this section.

SECTION _____. Section 74.006, Human Resources Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The council may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the council may not transfer more than the amount deposited to the credit of the fund from any source, including interest and the amount credited under Section 118.022, Local Government Code, during the preceding [more than 50 percent of the money that was contained in the trust fund on the first day of that] fiscal year. Money [The money] transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, [under this subsection] may be used only for child abuse and neglect prevention programs. The council may also transfer funds contained in the operating fund to the trust fund at any time. [This subsection expires August 31, 1996.]

(d) Interest earned on money in the trust fund shall be deposited to the credit of the trust fund.

SECTION _____. Section 74.007(b), Human Resources Code, is amended to read as follows:

(b) ~~[Beginning September 1, 1996, any interest earned on funds deposited in the trust fund shall be deposited in the operating fund.]~~ Administrative and other costs allowed in Section 74.005 shall be taken from the operating fund. ~~[Any interest earned before September 1, 1996, shall remain in the trust fund.]~~ The council may also transfer funds contained in the operating fund to the trust fund at any time.

SECTION _____. Section 74.010(b), Human Resources Code, is amended to read as follows:

(b) The council shall award grants that continue for one year. The council may renew a grant not more than two times unless certain circumstances as determined by the council require an extension of the period.

SECTION _____. If H.B. 3050 is enacted by the 74th Legislature at its regular session and becomes law, in addition to other amounts appropriated for the fiscal biennium ending August 31, 1997, an amount not to exceed \$_____ in the fiscal year ending August 31, 1996, and an amount not to exceed \$_____ in the fiscal year ending August 31, 1997, are hereby appropriated out of receipts to the Children's Trust Fund of Texas Council Operating Fund No. 541 to the Children's Trust Fund of Texas Council for the purpose of implementing this Act. The council is limited to a total number of full-time-equivalent positions not to exceed seven in the fiscal year ending August 31, 1996, and seven in the fiscal year ending August 31, 1997.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2569 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.H.B. 2569 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 2644 ON SECOND READING

Senator Patterson again asked unanimous consent to suspend the regular order of business, Senate Rule 5.14(a), and all necessary rules to take up for consideration at this time:

C.S.H.B. 2644, Relating to licensing and Medicaid certification requirements for certain nursing facilities and related penalties and dispute resolution.

There was objection.

Senator Patterson then moved to suspend the regular order of business, Senate Rule 5.14(a), and all necessary rules and take up **C.S.H.B. 2644** for consideration at this time.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Turner.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2644** in SECTION 1, subsection (h), line 37, by inserting the following after the word "law" and before ".":

"unless mandated by state law or necessary to protect patients from immediate and serious harm"

The amendment was read.

On motion of Senator Patterson, Floor Amendment No. 1 was tabled by the following vote: Yeas 19, Nays 12.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Gallegos, Galloway, Haywood, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth, West, Zaffirini.

Nays: Ellis, Harris, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Rosson, Truan, Turner, Whitmire.

Senator Turner offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2644** by deleting Section 5 in its entirety.

The amendment was read.

On motion of Senator Patterson, Floor Amendment No. 2 was tabled by the following vote: Yeas 17, Nays 11.

Yeas: Armbrister, Bivins, Brown, Galloway, Harris, Haywood, Leedom, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Wentworth, Whitmire, Zaffirini.

Nays: Ellis, Henderson, Lucio, Luna, Madla, Montford, Rosson, Sims, Truan, Turner, West.

Absent: Barrientos, Cain, Gallegos.

The bill was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2644 ON THIRD READING**

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2644** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on **H.B. 1** with a record vote of 147 Ayes, 0 Nays, and 2 Present-not voting.

The House has adopted the Conference Committee Report on **H.B. 677** with a record vote of 146 Ayes, 0 Nays, and 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 626** with a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 45** with a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1127** with a non-record vote.

The House has adopted the Conference Committee Report on **S.B. 68** with a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 815** with a record vote of 136 Ayes, 7 Nays, and 1 Present-not voting.

The House has adopted the Conference Committee Report on **H.B. 327** with a record vote of 137 Ayes, 10 Nays, and 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 707** with a record vote of 97 Ayes, 42 Nays, and 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 553** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 398** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 238** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 735** by a record vote of 132 Ayes, 0 Nays, 3 Present-not voting.

The House has concurred in Senate amendments to **H.B. 768** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 369** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Averitt, Chair; Smithee, Brady, G. Lewis, and Siebert.

The House refused to concur in Senate amendments to **H.B. 788** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Brimer, Chair; Oliveira, Moffat, Shields, and Ramsay.

The House refused to concur in Senate amendments to **H.B. 943** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives S. Turner, Chair; Conley, Bosse, Davila, and Davis.

The House has concurred in Senate amendments to **H.B. 994** by a non-record vote.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

(Senator Harris in Chair)

HOUSE BILL 1362 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1362, Relating to certain health care liability claims for which the state provides indemnification.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1362** by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 110.001, 110.002, 110.003, and 110.005, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Charity care or services" means care or services provided by a health care professional or health clinic ~~through~~ under:

~~[(A) Chapter 31, 32, 35, or 61, Health and Safety Code;~~

~~[(B) the Medicaid program under Chapter 32, Human Resources Code;~~

~~[(C) a contract with a migrant, community, or homeless health center that receives funds under 42 U.S.C. Section 254b, 254c, or 256;~~

~~[(D) Subchapter B, Chapter 311, Health and Safety Code, or 42 U.S.C. Section 1395dd, to the extent the professional or the hospital in which the care or services are provided is not compensated;~~

~~[(E)] an approved family practice residency training program established under Subchapter I, Chapter 61 [66], Education Code, to the extent the professional is not compensated for the services[;~~

~~[(F) an indigent health care program of a hospital district created under the authority of Article IX, Sections 4 through 11, of the Texas Constitution; or~~

~~[(G) a county correctional institution to inmates who are in custody of such county correctional institution operated by such county or under contract with such county].~~

(2) "Eligible health care liability claim" means a health care liability claim as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) against a health care professional or health clinic that renders charity care in at least 10 percent of the patient encounters engaged in by said health care professional or health clinic during the policy year in which the claim was made~~[-a claim against a health center, or a claim against a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code].~~

(3) "Health care professional" means:

(A) a person who is licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a person registered by the Board of Nurse Examiners as an advanced nurse practitioner or a certified nurse midwife; or

(C) a person licensed by the Physician Assistant Advisory Council under the Texas State Board of Medical Examiners as a physician assistant~~[-or~~

~~[(D) a health care professional who participates in a Medicaid managed care project established under Section 32.041, Human Resources Code].~~

(4) ~~["Health center" means a federally qualified health center, as that term is defined by 42 U.S.C. Section 1396d.~~

~~[(5)]~~ "Health clinic" means a clinic or other facility providing health care in conjunction with an approved family residency practice program.

~~(5)~~ ~~[(6)]~~ "Insurer" means an insurance company chartered to write or admitted to write and writing health care liability or medical professional liability insurance in this state, the Texas Medical Liability Insurance Underwriting Association (Article 21.49-3, Insurance Code), any self-insurance trust created under Article 21.49-4, Insurance Code, for the purpose of providing health care liability or medical professional liability insurance, or a purchasing group domiciled, registered, and writing health care liability or medical professional liability insurance for health centers in this state. The term "insurer" includes an institution of higher education that provides health care liability or medical professional liability coverage under Chapter 59, Education Code.

~~(6)~~ ~~[(7)]~~ "Health Care Liability claim" means a claim or action against a health care professional~~[-health center;]~~ or health clinic for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of a patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) [(8)] "Patient encounter" means an occasion on which a health care professional[~~;~~ ~~health center;~~] or health clinic renders professional health care services to a patient.

Sec. 110.002. STATE LIABILITY: PERSONS COVERED. In a health care liability cause of action against a health care professional[~~;~~ ~~health center;~~] or health clinic based on conduct described in Section 110.003, the state shall indemnify the health care professional[~~;~~ ~~health center;~~] or health clinic for actual damages adjudged against the health care professional[~~;~~ ~~health center;~~] or health clinic or which the health care professional[~~;~~ ~~health center;~~] or health clinic becomes obligated to pay pursuant to a settlement reached in accordance with this chapter.

Sec. 110.003. STATE LIABILITY: CONDUCT COVERED. (a) The state is liable for indemnification under this chapter only if the damages are based on an eligible health care liability claim against a health care professional[~~;~~ ~~health center;~~] or health clinic in the course and scope of providing professional health care.

(b) The state is liable for indemnification in a case unless the jury or, if a jury is waived, the trial judge in a cause of action against a health care professional[~~;~~ ~~health center;~~] or health clinic returns a verdict and judgment against the applicable defendant finding that such person or entity committed gross negligence or an intentional act found to be a proximate cause of the damages of the plaintiff.

Sec. 110.005. TIMELY NOTICE TO ATTORNEY GENERAL REQUIRED. The state is not liable for indemnification for damages under this chapter unless the health care professional[~~;~~ ~~health center;~~] or health clinic against whom the cause of action is asserted:

(1) is covered under a valid professional health care liability or medical liability insurance policy that is issued by an insurer and that provides coverage for the health care liability claim that is the subject of the claim or action with a policy limit of not less than \$100,000 per occurrence and \$300,000 aggregate for the policy period; and

(2) delivers or causes to be delivered to the attorney general a true copy of any summons or citation in a health care liability claim served on the health care professional[~~;~~ ~~health center;~~] or health clinic, which summons or citation shall be delivered to the attorney general not later than the 60th day after the receipt thereof by the health care professional[~~;~~ ~~health center;~~] or health clinic. However, subsequent notification of such summons or citation shall not be a basis for denial of a claim for indemnification unless the attorney general proves by clear and convincing evidence that such delay would unduly prejudice the state's ability to evaluate the reasonableness of the settlement offer or agreement. No such claim may be asserted by the state unless, within 10 days of the receipt of such late notification by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court in Travis County, Texas) a pleading setting forth the reasons why the state's ability to evaluate the reasonableness of the settlement offer or agreement has been prejudiced.

SECTION 2. Sections 110.006(a), (b), (d), and (e), Civil Practice and Remedies Code, are amended to read as follows:

(a) The insurer for a health care professional~~[-health center,]~~ or health clinic that is the subject of an eligible health care liability claim shall designate an attorney or other representative assigned to the claim who shall keep the attorney general or his designee reasonably informed of significant developments in the claim or action, including all settings for trials or dispositive motions, all settlement offers and demands, all pleadings by or against the health care professional~~[-health center,]~~ or health clinic, all judgments or other dispositive orders, and all written recommendations of counsel for the health care professional~~[-health center,]~~ or health clinic regarding settlement.

(b) If a settlement agreement is reached between the health care professional~~[-health center,]~~ or health clinic and a claimant, the insurer for the health care professional~~[-health center,]~~ or health clinic shall promptly notify the attorney general of same. The settlement shall become final and binding upon the state unless, within 10 days of the receipt of said notice by the attorney general (or such greater or lesser period of time as the court in which the action is filed may allow), the attorney general files in said court (or, if no action is pending in any court, in a district court of Travis County, Texas) a written objection to the settlement setting forth in detail why the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated and any other reason why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case. A hearing shall promptly be held upon any such objection, either before the court or a special master appointed by the court for that purpose. At any such hearing, the burden shall be upon the attorney general to prove by clear and convincing evidence that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated or any other reason why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case. Unless the court finds that the reasonable settlement value of the total claim being settled is significantly less than the amount for which the state would be liable for indemnification if the settlement were to be consummated or that there are other reasons why the state should not be liable for indemnification under this chapter based upon all the facts and circumstances of the case, the court shall enter an order approving the settlement and directing the state to make the required indemnity payment thereunder. Such an order shall be reviewable by an appellate court only upon the filing of an application for writ of mandamus within 15 days of the date said order is signed, and only for an abuse of discretion by the trial court. Any such application for writ of mandamus shall be given priority in the appellate court in which it is filed above all other applications for writ of mandamus docketed in said court.

(d) If a suit involving an eligible health care liability claim is imminently scheduled for jury trial or alternative dispute resolution, or if the defendant seeking indemnity is subject to a time limit under the Stowers Doctrine or other applicable law to respond to a settlement proposal, or is being tried before a jury, and settlement negotiations are ongoing between the health care professional[~~health center~~] or health clinic and any claimant, either of those parties may request the court to require the attorney general or his designee to assign an attorney to monitor such negotiations so that if a settlement agreement is reached between the parties, the attorney so assigned by the attorney general can immediately advise the court of any objection, in which event the hearing described in Subsection (b) shall be held immediately after the settlement agreement is reduced to writing or announced on the record in open court, so that the trial court may render its determination before the petit jury or jury panel is discharged.

(e) Except to the extent that the attorney general is authorized under this section to object to the reasonableness of a settlement, the attorney general shall not be authorized to intervene in any court proceeding involving an eligible health care liability claim. The insurer for the health care professional[~~health center~~] or health clinic shall be in charge of the defense of any such claim.

SECTION 3. Sections 1, 2, 3, 4, 5, 6, and 7, Article 5.15-4, Insurance Code, are amended to read as follows:

Sec. 1. DEFINITIONS. In this article, "charity care or services," "eligible health care liability claim," "health care professional," [~~"health center,"~~] "health clinic," "insurer," "health care liability claim," and "patient encounter" have the meanings assigned by Section 110.001, Civil Practice and Remedies Code.

Sec. 2. QUALIFICATION FOR DISCOUNT. A health care professional[~~health center~~] or health clinic is entitled to a premium discount for medical professional liability insurance coverage if the professional[~~center~~] or health clinic meets the criteria stated in Section 4 of this article.

Sec. 3. AMOUNT OF PREMIUM DISCOUNT. (a) The Texas Department of Insurance shall approve premium discounts to be used by each insurer on premiums to be charged to a health care professional[~~health center~~] or health clinic covered by this section. Each insurer shall file proposed premium discounts and any loss and statistical data required by department rule.

(b) The insurer has the burden of demonstrating to the department, by a preponderance of the evidence, that the proposed premium discount is adequate to reflect the reduction in the insurer's liability exposure based on the state's indemnification of the first \$100,000 or \$25,000 under Chapter 110, Civil Practice and Remedies Code, of an eligible malpractice claim against a health care professional[~~health center~~] or health clinic.

(c) The information required to be filed with the Texas Department of Insurance under this section is public information and shall be made available to the public on written request.

Sec. 4. QUALIFICATION FOR PREMIUM DISCOUNT. (a) A health care professional is entitled to a premium discount for medical professional liability insurance coverage if:

(1) the projected patient encounters of the health care professional during the policy year will involve providing charity care or services in 10 percent or more of the health care professional's patient encounters; and

(2) the health care professional completes 15 hours of continuing education during the calendar year in which the policy is in effect on patient safety and risk reduction subjects related to the health care professional's practice that are sponsored, approved, endorsed, or accredited by the Texas Department of Insurance or the health care professional's licensing or certifying agency, an "insurer" as defined in this Act, or state or nationally recognized accrediting organizations or continuing medical or nurse education programs.

(b) ~~[A health center is entitled to a premium discount for professional liability coverage if the health center adopts a quality assurance program.~~

~~[(c)] A health clinic [or health care professional under Section 110.001(3)(D), Civil Practice and Remedies Code,] is entitled to a premium discount for professional liability coverage if the health clinic [or health care professional under Section 110.001(3)(D), Civil Practice and Remedies Code,] provides at least 10 percent or more of charity care or services and adopts a quality assurance program.~~

~~(c) [(d)] The Texas Department of Insurance may adopt rules governing [health center or] health clinic quality assurance programs.~~

Sec. 5. REQUEST FOR PREMIUM DISCOUNT. A health care professional ~~[, health center,]~~ or health clinic that desires a premium discount for medical professional liability insurance coverage shall submit to the insurer, at the time coverage is applied for, a written verified application for a new policy or a verified statement for a policy to be renewed stating that the health care professional ~~[, health center,]~~ or health clinic desires a premium discount and qualifies for a premium discount under this article. The application or statement also shall provide for each policy for which a discount is requested necessary information to determine the eligibility of the health care professional ~~[, health center,]~~ or health clinic and the amount of the discount.

Sec. 6. AUDIT; PENALTY. (a) At the end of a policy year, an insurer may audit the records of any health care professional ~~[, health center,]~~ or health clinic to which the insurer has provided a discount under this article to determine if the health care professional ~~[, health center,]~~ or health clinic provided the charity care and services necessary under Section 4 of this article to qualify for the premium discount during the preceding policy year.

(b) To conduct the audit, the insurer is entitled to access to any books and records necessary to determine if the verified application or statement submitted for the coverage was correct and the health care professional ~~[, health center,]~~ or health clinic was eligible for the premium discount. If a health care professional ~~[, health center,]~~ or health clinic denies access to the property or to the books and records, the insurer may obtain an

appropriate court order from a court of competent jurisdiction to gain access to the books and the records.

(c) If an insurer's audit indicates that a health care professional[; ~~health center~~;] or health clinic did not provide charity care or services as required under Section 4 of this article, the insurer may charge the health care professional[; ~~health center~~;] or health clinic an amount equal to the difference between the premium paid and the premium that would have been due if the health care professional[; ~~health center~~;] or health clinic had not received the premium discount plus 20 percent of the amount of the premium that would have been due without the premium discount.

(d) If a health care professional[; ~~health center~~;] or health clinic that has received the premium discount for the policy year submits the difference between the premium paid and the premium that would have been due if the health care professional[; ~~health center~~;] or health clinic had not received the premium discount plus interest at the legal rate for the unpaid premium prior to 30 days before the expiration of the policy year, the health care professional[; ~~health center~~;] or health clinic will not be subject to the penalty provided in Subsection (c).

Sec. 7. PROHIBITIONS ON INSURER; SANCTIONS. (a) An insurer may not cancel or refuse to renew professional liability insurance coverage solely on the basis that the covered health care professional[; ~~health center~~;] or health clinic is eligible for a premium discount under this article except for the following reasons:

- (1) fraud or misrepresentation in obtaining coverage;
- (2) failure to pay premiums when due; or

(3) the insurer's being placed under supervision or in conservatorship or receivership, if the cancellation or nonrenewal is approved by the supervisor, conservator, or receiver.

(b) A health care professional[; ~~health center~~;] or health clinic who files the appropriate verified application or statement under this article will be entitled to a premium discount as approved by the department under Section 3 of this article. When consent to rate is used, a health care professional[; ~~health center~~;] or health clinic will be entitled to the appropriate discount from the rate agreed to by consent.

(c) An insurer who violates this article is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

SECTION 4. The change in law made by this Act to Chapter 110, Civil Practice and Remedies Code, applies only to claims under that chapter filed with the attorney general on or after the effective date of this Act. A claim under that chapter filed with the attorney general in accordance with that chapter before the effective date of this Act is covered by Chapter 110 as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 5. The change in law made by this Act to Article 5.15-4, Insurance Code, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy that is delivered, issued for delivery, or renewed before the

effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Moncrief offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **H.B. 1362**, page 13, line 19 by striking all of the sentence beginning on such line and substitute the following to read as follows:

"A claim or cause of action under that chapter accruing under policies issued prior to the effective date of this act, filed with the Attorney General pursuant to such act, shall remain eligible for indemnification under such chapter and the former law is continued in effect for that purpose."

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1362 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1362** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2850 ON SECOND READING**

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2850, Relating to the regulation of the indoor air quality of certain school district buildings.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2850 ON THIRD READING**

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.H.B. 2850 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Moncrief in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2603 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2603, Relating to the liability of and a motor vehicle liability self-insurance program for volunteer fire departments.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 2603 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 101.001, Civil Practice and Remedies Code, is amended by amending Subdivision (2) and adding Subdivision (6) to read as follows:

(2) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority; ~~and~~

(C) a volunteer fire department; and

(D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

(6) "Volunteer fire department" means a fire department that is:

(A) operated by its members; and

(B) exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization in Section 501(c)(3) of that code (26 U.S.C. Section 501(c)(3)).

SECTION 2. Section 101.023, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) Except as provided by Section 78.001, liability of a volunteer fire department under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

SECTION 3. This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2603 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2603** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2758 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2758, Relating to the provision of municipal services in an annexed area.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2758** as follows:

(1) In SECTION 2, add the following language between "change in law made by" and "this Act": "SECTION 1 of"

(2) Add a new SECTION 3 to read as follows and renumber subsequent sections:

"Art. 974d-44

"Sec. 1. APPLICATION. This article applies to any incorporated city, town or village operating under general laws or under a home-rule charter. This act validates governmental acts or proceedings which may otherwise be invalid or void because of procedural defects in the manner of enactment.

"Sec. 2. ANNEXATION PROCEEDINGS. (a) The governmental acts and proceedings of a city or town relating to the annexation or attempted annexation of adjacent territory by the city or town are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with the procedural requirements of Chapters 42 and 43, Local Government Code, or another law. This article does not validate an annexation ordinance if a service plan required by Sec. 43.056, Local Government Code is not prepared by the governing body. The boundaries fixed by the annexation or attempted annexation are validated.

"(b) The governmental acts and proceedings of the city or town occurring after the annexation may not be held invalid on the ground that the annexation, in the absence of this article, was invalid.

"Sec. 3. ADOPTION OR AMENDMENT OF HOME-RULE CHARTER. (a) All governmental acts and proceedings of a municipality covered by this article regarding the adoption or amendment of a home-rule charter are validated as of the dates on which they occurred.

"(b) All governmental acts and proceedings of the municipality since adoption or attempted adoption or amendment of the charter are validated as of the dates on which they occurred.

"Sec. 4. INCORPORATION PROCEEDINGS. (a) The incorporation proceedings of all cities and towns in this state that incorporated or attempted to incorporate under the general laws of the State of Texas, whether under the aldermanic or commission form of government, and which have functioned or attempted to function as incorporated cities or towns since the date of such incorporation or attempted incorporation are validated as of the date of such incorporation or attempted incorporation. The incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or incorporation proceedings may not have been in accordance with law.

"(b) All governmental proceedings performed by the governing bodies of all such cities and towns and their officers since their incorporation or attempted incorporation are validated as of the date of such proceedings, including extensions or attempted extensions of extraterritorial jurisdiction undertaken at the request of owners of territory.

"Sec. 5. ANNEXATIONS NOT VALIDATED. This article does not validate governmental acts or proceedings relating to a city's or town's annexation or attempted annexation of territory in the extraterritorial jurisdiction of another city or town without the consent of that city or town in violation of Chapters 42 and 43, Local Government Code.

"Sec. 6. This article applies to governmental acts and proceedings of cities and towns that occurred before March 1, 1995.

"Sec. 7. ORDINANCE OR REGULATION NOT VALIDATED. This article does not validate any ordinance or regulation of a municipality that violates Section 1.06 or 109.57, Alcoholic Beverage Code.

"Sec. 8. FORMATION OF LOCAL GOVERNMENT CORPORATION. All governmental acts and proceedings of a municipality in creating, organizing and operating a local government corporation under Section 4A of Article 1528I, Vernon's Texas Civil Statutes, for purposes of owning and operating a facility licensed pursuant to Article 179e, Vernon's Texas Civil Statutes, are validated and approved as of the date of the creation of the local government corporation, all provisions of Article 1528I, Vernon's Texas Civil Statutes, apply to such corporation, and the activities of the corporation are validated or approved to be for a public purpose.

"Sec. 9. EFFECT OF LITIGATION. This article does not apply to any matter that on the effective date of this article:

"(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

"(2) has been held invalid by a final judgment of a court of competent jurisdiction.

The amendment was read and was adopted by a viva voce vote.

VOTE RECONSIDERED

On motion of Senator Ellis and by unanimous consent, the vote by which Floor Amendment No. 1 was adopted was reconsidered.

Question—Shall Floor Amendment No. 1 to **C.S.H.B. 2758** be adopted?

On motion of Senator Ellis and by unanimous consent, Floor Amendment No. 1 was withdrawn.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2758** by adding a new Section 2 as follows, and renumbering Section 2 as Section 3, and Section 3 as Section 4.

SECTION 2. Section 43.056, Local Government Code, is amended by adding Section 43.056(b-2) to read as follows:

(a) The service plan for the annexation by a municipality which provides both water and sewer service of an area that is:

(1) 40 acres or more in size;

(2) located entirely in a county with a population greater than 260,000;

(3) located in the extraterritorial jurisdiction limits of a general law town with a population of more than 1,000 but less than 2,500 which provides water and does not provide sewer service; and

(4) adjacent or contiguous to the corporate limits of the municipality which provides both water and sewer service; must include a program under which the annexing municipality will provide both water and sewer service to the area within 3 1/2 years after the effective date of the annexation.

(b) The municipality which provides both water and sewer service may annex the area upon receipt of a petition of those landowners requesting annexation. Upon receipt of the petition, the extraterritorial jurisdiction of the general law town which does not provide sewer service will be deemed automatically released. The provisions of Section 43.051, existing agreed court orders or existing boundary adjustment agreements, if any, do not apply to annexation of an area pursuant to this Section.

(d) This legislation shall expire on March 31, 1996. If there is pending litigation at that time in effect regarding the validity of any annexations involving areas subject to this section, the expiration period shall automatically be extended until such litigation is resolved.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2758 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.H.B. 2758 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

H.B. 73	H.B. 841	H.B. 1605	H.B. 2187	H.B. 2771
H.B. 76	H.B. 1124	H.B. 1648	H.B. 2304	H.B. 2793
H.B. 160	H.B. 1205	H.B. 1661	H.B. 2463	H.B. 2926
H.B. 200	H.B. 1225	H.B. 1670	H.B. 2496	H.B. 3053
H.B. 280	H.B. 1359	H.B. 1717	H.B. 2574	H.B. 3109
H.B. 331	H.B. 1375	H.B. 1757	H.B. 2588	H.B. 3165
H.B. 333	H.B. 1385	H.B. 1875	H.B. 2613	H.B. 3188
H.B. 336	H.B. 1417	H.B. 1882	H.B. 2640	H.B. 3195
H.B. 340	H.B. 1491	H.B. 1943	H.B. 2658	H.B. 3198
H.B. 457	H.B. 1510	H.B. 1964	H.B. 2661	H.B. 3211
H.B. 496	H.B. 1536	H.B. 2008	H.B. 2669	H.C.R. 127
H.B. 609	H.B. 1537	H.B. 2022	H.B. 2673	H.C.R. 220
H.B. 740	H.B. 1544	H.B. 2053	H.B. 2684	H.C.R. 221
H.B. 741	H.B. 1551	H.B. 2062	H.B. 2731	H.C.R. 222
H.B. 824	H.B. 1604			

HOUSE BILL 1826 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1826, Relating to the approval of disposal system plans by the Texas Natural Resource Conservation Commission.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1826**, SECTION 1, by adding a new subsection (g) to read as follows:

(g) A person who disposes of domestic waste through a disposal system approved pursuant to this Section and who purchases water from a regulated water supply system or public water system through a master meter and who submeters the water pursuant to the laws of this state is not a "water supply system" nor a "public water system".

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1826 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1826** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 231

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 231, Instructing the House enrolling clerk to make technical corrections to **H.B. 2162**.

WHITMIRE

The resolution was read.

On motion of Senator Whitmire and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

HOUSE BILL 1612 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1612, Relating to the application to religious facilities of the law relating to architectural barriers.

The bill was read second time.

Senator Sibley offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1612** as follows:

On page 1, line 8, after the word "within" and before the word "a" insert the word "either".

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1612 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1612** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 809 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 809, Relating to the purposes for which funds received by local crime stoppers programs may be used, including the installation of signs on the right-of-way of public highways.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 809** as follows:

Strike Section 3 and renumber subsequent sections appropriately.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 809 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 809** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote:
Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3101 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3101, Relating to the amounts that may be charged and collected in connection with a loan or other extension of credit for accounts and notes receivable.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3101** by:

1) striking all below the enacting clause and inserting the following:

SECTION 1. Chapter 1, Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 1.14 to read as follows:

Art. 1.14. PURCHASES OF ACCOUNTS RECEIVABLE. (a) In this article, "account purchase transaction" means an agreement or agreements under which a person or entity engaged in a commercial enterprise sells accounts, instruments, documents, and/or chattel paper subject to this chapter at a discount, whether or not the person or entity has a related repurchase obligation.

(b) For the purposes of this chapter, the amount of any discount in, or charged under, an account purchase transaction is not compensation contracted for, charged, or received with respect to that account purchase transaction.

(c) For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase shall be conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.

SECTION 2. This Act applies to an account purchase transaction entered before, on, or after the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

2) conforming the caption to the text of the bill.

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 3101 as follows:

Add a new SECTION 1 of C.S.H.B. 3101 as follows:

SECTION 1. Section 18.02 Business and Commerce Code is amended by amending Subsection (b)(1) to read as follows:

Sec. 18.02. Credit Services Organization

(b) The following are exempt from this Chapter:

(1) A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701, et seq.) or a person or entity qualified under an existing contract to sell or broker a mortgage loan to a person or entity otherwise eligible to make a loan under this Article;

Renumber all subsequent Sections accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator West offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 3101 as follows:

(1) Add the following appropriately numbered SECTIONS:

SECTION _____. The Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Sections 4A, 4B, and 4C to read as follows:

Sec. 4A. APPLICANT TO PUBLISH NOTICE. (a) Every applicant for a pawnshop license for a location in a county with a population of 1.5 million or more shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which his place of business is located. If no newspaper is published in the city or town, the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper published in the closest neighboring county and circulated in the county of the applicant's residence.

(b) The notice shall be printed in 10-point boldface type and shall include:

(1) the exact location of the place of business for which the pawnshop license is sought;

(2) the full name of the applicant and, if the applicant is a partnership, the full name of each member; and

(3) if the applicant is a corporation, the full name and title of each officer.

Sec. 4B. NOTICE BY SIGN. (a) An applicant for a pawnshop license for a location in a county with a population of 1.5 million or more not previously licensed shall, at his own expense, prominently post an outdoor sign at the location stating that a pawnshop is intended to be operated on the premises and the name and business address of the applicant.

(b) The sign shall be written in a manner and of a size the Commissioner considers adequate to inform the general public of the intended use of the property. The Commissioner may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

(c) An application may not be denied for failing to post the notice required by this section if the Commissioner determines that the general public in the area in which the premises to be licensed are located is adequately aware of the nature of the application.

Sec. 4C. NOTICE TO PUBLIC OFFICIALS. The Commissioner shall give notice of all pawnshop license applications for locations in counties with a population of 1.5 million or more to:

(1) the county judge of the county in which the applicant's place of business is located;

(2) the mayor or other presiding officer of the governing body of the municipality in which the applicant's place of business is located if located in a municipality;

(3) the state representative in whose district the applicant's place of business is located; and

(4) the state senator in whose district the applicant's place of business is located.

SECTION 2. Section 5, Texas Pawnshop Act (Article 5069-51.05, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsection (h) to read as follows:

(a) When an application and the required fees are received, the Commissioner shall investigate the facts and shall notify the Department of Public Safety and all local law enforcement agencies in the county in which the business is to be conducted that the application has been filed. In the notice, the Commissioner shall state the names and addresses of the persons that are required to be listed on the license application under Subsection (a) of Section 4 of this Act. The Commissioner shall give those law enforcement agencies a reasonable time to respond with information concerning those persons or with any other relevant information. The Commissioner shall give notice of the application to each pawnshop licensee in the county in which the pawnshop is to be located. The Commissioner [and] shall give any person receiving notice under Section 4A or 4B of this Act who would be affected by the granting of the proposed application and any pawnshop licensee that would be affected by the granting of the proposed application an opportunity to appear, present evidence, and be heard for or against the application at a public hearing held in accordance with Subsection (b) of this section.

(h) The Commissioner shall consider the public safety, health, and general welfare of the community that would be affected by the granting of a proposed pawnshop license.

SECTION 3. Section 17B, Texas Pawnshop Act (Article 5069-51.17B, Vernon's Texas Civil Statutes), is amended by adding Subsection (s) to read as follows:

(s) The commissioner may adopt rules related to the notice by publication and by sign required under Sections 4A and 4B of this Act.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3101 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 3101** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 1013** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Romo, Chair; Carona, Elkins, Gutierrez, and Patterson.

The House refused to concur in Senate amendments to **H.B. 1419** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Yarbrough, Chair; Wilson, D. Jones, Torres, and Kubiak.

The House has concurred in Senate amendments to **H.B. 1405** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1001** by a record vote of 137 Ayes, 7 Nays, 2 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1698** by a record vote of 142 Ayes, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1586** by a record vote of 133 Ayes, 6 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1697** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1487** by a non-record vote.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
HOUSE BILL 1023 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1023, Relating to regulation of end stage renal disease facilities; providing penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1023 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1023** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 40 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 40, Relating to the requirement of DNA analysis of certain inmates and to the creation of a DNA database; providing penalties.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 40** as follows:

Amend Section 1, creating 411.148, Government Code, by deleting subdivisions (1), (2) and (3) of Subsection (a) of 411.148, Government Code, (at page 10, lines 8-22, House engrossment), and substituting the following:

(1) an offense under one or more of the following Penal Code provisions:

(A) Section 21.11 (indecent with a child);
(B) Section 22.011 (sexual assault);
(C) Section 22.021 (aggravated sexual assault);
(D) Section 20.04(a)(4) (aggravated kidnapping), if the
defendant committed the offense with intent to violate or abuse the victim
sexually; or

(E) Section 30.02 (burglary), if the offense is punishable
under Subsection (d) of that section and the defendant committed the
offense with intent to commit a felony listed in Paragraph (A), (B), (C),
or (D) of this subdivision; or

(2) any offense if the inmate has previously been convicted of:

(A) an offense described in Subsection (a)(1); or

(B) an offense under federal law or laws of another state
that involves the same conduct as a offense described by Subsection (a)(1).

Amend Section 1, creating Section 411.148, Government Code, by deleting Subsection (e) (at page 11, lines 17-24, House engrossment).

Amend Section 1, creating Section 411.148, Government Code, by deleting "(f)" (at page 11, line 25, House engrossment) inserting "(e)".

Amend Section 1, creating Section 411.150, Government Code, by deleting subdivisions (1), (2) and (3) of Subsection (a) (at page 12, lines 14-27, and page 13, line 1, House engrossment), and inserting the following:

(1) one or more of the following Penal Code provisions:

(A) Section 21.11 (indecent with a child);

(B) Section 22.011 (sexual assault);

(C) Section 22.021 (aggravated sexual assault);

(D) Section 20.04(a)(4) (aggravated kidnapping), if the
defendant committed the offense with the intent to violate or abuse the
victim sexually; or

(E) Section 30.02 (burglary), if the offense is punishable
under Subsection (d) and the defendant committed the offense with the
intent to commit a felony listed in paragraph (A), (B), (C), or (D) of this
subdivision; or

(2) a penal law if the juvenile has previously been adjudicated as
having engaged in:

(A) a violation of a penal law described in Subsection
(a)(1); or

(B) a violation of a penal law under federal law or the
laws of another state that involves the same conduct as a violation of a
penal law described by Subsection (a)(1).

Amend Section 1, creating Section 411.150, Government Code, by deleting Subsection (c) of Section 411.150 (at page 13, lines 6-13, House engrossment).

The committee amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 40** as follows:

(1) On page 3, between lines 12 and 13, insert a new Subsection (h) to read as follows:

(h) The department shall establish standards for DNA analysis by the DNA laboratory that meet or exceed the current standards for quality assurance and proficiency testing for forensic DNA analysis issued by the FBI. The DNA database may contain only DNA records of DNA analyses performed according to the standards adopted by the department.

(2) On page 3, strike lines 21-27 and substitute the following:

(c) Other purposes of the database include:

(1) assisting in the recovery or identification of human remains from a disaster or for humanitarian purposes;

(2) assisting in the identification of living or deceased missing persons; and

(3) if personal identifying information is removed:

(A) establishing a population statistics database;

(B) assisting in identification research and protocol development; and

(C) assisting in database or DNA laboratory quality control.

(3) On page 8, strike lines 6-27, and on page 9, strike line 1, and substitute the following:

(c) The department may release a DNA sample, analysis, or record only:

(1) to a criminal justice agency for law enforcement identification purposes;

(2) for a judicial proceeding, if otherwise admissible under law;

(3) for criminal defense purposes to a defendant, if related to the case in which the defendant is charged; or

(4) if personally identifiable information is removed, for:

(A) a population statistics database;

(B) identification research and protocol development; or

(C) quality control.

(4) On page 9, line 2, strike "(f)" and substitute "(d)".

(5) On page 9, strike lines 5-6.

(6) On page 9, line 7, strike "(h)" and substitute "(e)".

(7) On page 9, line 10, strike "(j)" and substitute "(f)".

(8) On page 9, strike lines 12-23.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 40** as follows:

Delete Section 2, creating Article 38.351, Code of Criminal Procedure, (at page 15, lines 8-27, and page 16, lines 1-14, House engrossment) and renumber the remaining sections accordingly.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 40 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 40** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 576 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 576, Relating to theft by check, issuance of bad checks, and collection of processing fees for dishonored checks; providing penalties.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 576** as follows:

(1) In SECTION 1 of the bill, on page 1, line 13, after the words "Section 31.06(a)" insert the words "and (b)".

(2) Between lines 31 and 32, insert the following:

"(b) For purposes of Subsection (a)(2), notice may be actual notice or notice in writing that:

(1) is sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested;

(2) is addressed to the issuer at his address shown on:

(A) (1) the check or order;

(B) (2) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(3) On page 1, line 45, insert the following new SECTION 3, and renumber sections accordingly:

"SECTION 3. Subsection (c), Section 32.41, Penal Code is amended to read as follows:

(c) Notice for purposes of Subsection (b)(2) may be actual notice or notice in writing that:

(1) is[;] sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested[;]

(2) is, ~~and~~ addressed to the issuer at his address shown on:

(A) [~~(1)~~] the check or order;

(B) [~~(2)~~] the records of the bank or other drawee; or

(C) [~~(3)~~] the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

The amendment was read and was adopted by a viva voce vote.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 2

Add the following new SECTION to C.S.H.B. 576 and renumber the existing sections accordingly:

SECTION ____ . Section 31.06, Penal Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) For purposes of Subsection (a)(2) or (f)(3), notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

(f) If the actor obtained property by issuing or passing a check or similar sight order for the payment of money, the actor's intent to deprive the owner of the property under Section 31.03 (theft) is presumed, except in the case of a postdated check or order, if:

(1) the actor ordered the bank or other drawee to stop payment on the check or order;

(2) the bank or drawee refused payment to the holder on presentation of presentation of the check or order within 30 days after issue;

(3) the owner gave the actor notice of the refusal of payment and made a demand to the actor for payment or return of the property; and

(4) the actor failed to:

(A) pay the holder within 10 days after receiving the demand for payment; or

(B) return the property to the owner within 10 days after receiving the demand for return of the property.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 576 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 576** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2550 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2550, Relating to the regulation of food wholesalers and manufacturers and distributors of devices under the Texas Food, Drug, and Cosmetic Act.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2550** following Section 8, by inserting a new Section 9 as follows and renumber accordingly:

Section 9. Subchapter L, Chapter 431, Health and Safety, is repealed.

The committee amendment was read and was adopted by a viva voce vote.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2550** by deleting Section 9 of the bill.

The amendment was read.

On motion of Senator Harris, Floor Amendment No. 1 was tabled by the following vote: Yeas 18, Nays 12.

Yeas: Armbrister, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth.

Nays: Barrientos, Cain, Ellis, Gallegos, Luna, Moncrief, Montford, Rosson, Truan, West, Whitmire, Zaffirini.

Absent: Bivins.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2550 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that H.B. 2550 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 3021 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business, Senate Rule 5.14(a), and all necessary rules were suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3021, Relating to the regulation of bingo; providing penalties.

The bill was read second time.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 1

(1) Amend **H.B. 3021**, on page 1 at line 22, in SECTION 1, by striking Section 2, (22), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) and replacing it with the following:

(22) "Bingo equipment" means equipment actually used, made or sold for the purpose of use in bingo games and includes machines or other devices from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called, ~~[the balls or items themselves;]~~ electronic or mechanical cardminding devices, pull tab or instant bingo dispensers, bingo cards and any other device commonly used in the direct operation of the game. "Bingo equipment" does not include:

(A) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is actually used in a bingo game subject to regulation under this Act; or

(B) commonly available component parts of bingo equipment such as light bulbs, fuses, or bingo balls.

(2) Amend **H.B. 3021**, on page 1 at line 41, in SECTION 1, by striking Section 2, (25), Bingo Enabling Act (Article 179d Vernon's Civil Statutes) and replacing it with the following:

(25) "Ticket or pull-tab dispenser" means an electronic or mechanical device that dispenses a break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game after a person inserts money into the device. A bingo game representation or combination of bingo games must be shown on the ticket dispensed.

(3) Amend **H.B. 3021**, on page 1 at line 50, in SECTION 1, by striking Section 2, (27), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) and replacing it with the following:

(27) "Automated bingo services" means a computer program or system for registering or accounting for bingo sales, prizes, inventory and prize fees, for generating required reports to the commission, and for providing the conductor of a bingo game with other information requested for accounting or other business purposes.

(4) Amend H.B. 3021, on page 2 at line 45, in SECTION 2, by striking (p) and adding a new (p) and adding the new subsections (e), (y) and (z) to Section 11, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) to read as follows:

(e) A pull-tab or instant bingo game prize may not exceed 500 times the purchase price of the ticket. No more than five pull-tab or instant bingo dispensers may be operated in any bingo premises.

(p) No one other than a licensed lessor or a licensed authorized organization may advertise [or promote] bingo. A licensed lessor may only advertise with the written consent of the licensed authorized organizations in that location. [A licensed authorized organization may not include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.]

(y) A licensed commercial lessor may lease or purchase electronic or mechanical cardminders and pull tab or instant bingo ticket dispensers from licensed distributors. Licensed distributors may sell or lease electronic or mechanical cardminders and pull tab or instant bingo ticket dispensers to licensed commercial lessors. Licensed commercial lessors may sublease electronic or mechanical cardminders and pull tab or instant bingo ticket dispensers only to licensed authorized organizations to which they lease premises. The lease of this equipment is not included as a part of the rent in connection with the use of the bingo premises. A licensed authorized organization may lease or purchase electronic or mechanical cardminders, pull tab or instant bingo ticket dispensers, bingo machines, consoles, blowers and flashboards directly from licensed distributors.

(z) The toll-free "800" number operated by the Problem Gamblers' HelpLine of the Texas Council on Problem and Compulsive Gambling must be prominently displayed on each card-minding device and ticket or pull-tab dispenser.

(5) Amend H.B. 3021, on page 4 line 1, in SECTION 7, by striking Section 18 and replacing it with a new Section 18, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) as follows:

Sec. 18. FREQUENCY AND TIMES OF GAMES. A game of bingo may not be conducted under any license issued under this Act more often than three days per calendar week, not to exceed four hours per ~~[24-hour period] day. [Only one bingo occasion per day may be conducted under each license issued under this Act.]~~ A licensed authorized organization may conduct two occasions per day. No more than two organizations may conduct a game of bingo in one place on one day. If two organizations conduct games of bingo in one place on one day, these occasions must be announced separately, and an intermission of at least ~~[30]~~ 10 minutes must occur between games. ~~[A game conducted under a temporary license may not be conducted in violation of this section.]~~ No more than two bingo

occasions per day may be conducted at any location except that a third occasion may be conducted under a temporary license held by a licensed authorized organization at that location.

(6) Amend **H.B. 3021** in SECTION 8 by striking the proposed amendments to Section 19a(k), Bingo Enabling Act, and striking the proposed Subsections (l) and (m), Section 19a, Bingo Enabling Act, (Article 179d, Vernon's Texas Civil Statutes) in their entirety.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Nelson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

(Senator Armbrister in Chair)

HOUSE BILL 3021 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 3021** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Patterson, Ratliff, Rosson, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Galloway, Nelson, Nixon, Shapiro.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Galloway, Nelson, Nixon, Ratliff, and Shapiro asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE

HOUSE BILL 1020 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1020, Relating to the regulation of savings banks.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE

HOUSE BILL 1020 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1020** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2891 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2891, Relating to reports to the legislature by state health and human services agencies and to the long-term care state plan for the elderly.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2891 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2891** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 93 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 93, Relating to the imposition of a sentence for the offense of intoxication manslaughter.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 93 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 93** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1193 ON SECOND READING**

Senator Zaffirini asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1193, Relating to the regulation of orthotists and prosthetists; providing a civil penalty.

There was objection.

Senator Zaffirini then moved to suspend the regular order of business and take up **C.S.H.B. 1193** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brown, Ellis, Haywood, Leedom, Lucio, Luna, Moncrief, Montford, Nelson, Nixon, Patterson, Rosson, Shapiro, Sibley, Truan, Turner, Whitmire, Zaffirini.

Nays: Galloway, Madla, Ratliff, Sims, Wentworth.

Absent: Cain, Gallegos, Harris, Henderson, West.

The bill was read second time.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 1

Amend subsection (e) of Section 21 of **C.S.H.B. 1193**, to read as follows:

(c) This Act does not apply to a certified fitter or certified master orthotist who holds a credential issued by the National Association of Retail Druggists if the fitter or master orthotist is working within the person's scope of practice as defined by that credential ~~[the maximum allowable payment schedule of the Texas Rehabilitation Commission.]~~ Nothing in this section shall be construed to authorize a person holding such a credential to evaluate, design, fabricate, fit or service artificial limbs.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1193 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1193** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Galloway, Haywood, Leedom, Luna, Madla, Montford, Nelson, Patterson, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, Whitmire, Zaffirini.

Nays: Nixon, Ratliff.

Absent: Gallegos, Harris, Henderson, Lucio, Moncrief, West.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2307 ON SECOND READING

On motion of Senator Haywood and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2307, Relating to powers and duties of the Advisory Commission on State Emergency Communications and emergency communication districts and to the administration of state emergency communications services.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2307 ON THIRD READING

Senator Haywood moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2307** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House refused to concur in Senate amendments to **H.B. 2890** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives R. Lewis, Chair; Counts, Walker, Yost, and Siebert.

The House refused to concur in Senate amendments to **H.B. 2766** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Smithee, Chair; Van de Putte, Berlanga, Averitt, and Driver.

The House has concurred in Senate amendments to **H.B. 2216** by a record vote of 143 Ayes, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 2943** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 3031** by a record vote of 135 Ayes, 1 Nays, 2 Present-not voting.

The House has concurred in Senate amendments to **H.J.R. 68** by a record vote of 146 Ayes, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to **H.C.R. 186** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 2027** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Yarbrough, Chair; Davila, Luna, Talton, and Solomons.

The House refused to concur in Senate amendments to **H.B. 3189** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Puente, Chair; R. Lewis, King, Conley, and Holzheuser.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE BILL 2189 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2189, Relating to the creation, composition, operation, and management of certain conservation and reclamation districts.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2189** as follows:

SECTION ____ . Section 58.079, Water Code, is amended to read as follows:

Sec. 58.079. COMPENSATION OF DIRECTORS. (a) A director is entitled to receive compensation of not more than \$[25] 100 a day for each day [he] the director actually spends performing his duties as a director, but the fee shall not be more than \$[100] 500 for any one (1) month.

(b) A director may receive, with the board's approval, reimbursement of actual expenses reasonably incurred while serving the district.

[(b)](c) Before a director may receive compensation for his services or reimbursement for travel or other expenses incurred while serving the district, he shall file with the secretary, a verified statement showing the number of days actually spent in the service of the district, actual expenses incurred, and a general description of duties performed during each day of service. The statement shall be filed on the last day of the month, or as soon after that time as possible.

SECTION ____ . Section 58.131(a), Water Code, is amended to read as follows:

(a) The Board may set reasonable penalties for the breach of any rule of the district, which shall not exceed fines of more than \$[200] 1,000 or imprisonment for more than thirty (30) days, or both.

SECTION ____ . Section 58.360, Water Code, is amended to read as follows:

SECTION 58.360. OPERATION AND MAINTENANCE TAX.

(a) A district may levy and collect a tax for operation and maintenance purposes, including funds for planning, constructing, acquiring, maintaining, repairing, and operating all necessary land plants, works, properties, facilities, equipment and improvements of the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

The committee amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 2189** by adding the following:

SECTION 50.066. LABORATORY SERVICES. A district may contract with any person, within or without the boundaries of the district, to provide or receive laboratory services related to environmental health or drinking water testing.

The committee amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2189** by adding a new appropriately numbered SECTION as follows and renumbering subsequent sections appropriately:

SECTION ____ . Sec. 58.313, Water Code, is amended to read as follows:

Sec. 58.313. INTEREST AND COLLECTION FEES. (a) All assessments shall bear interest from the date payment is due at the rate of 15 ~~[10]~~ percent a year.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by any legal proceeding, an additional amount of 15 ~~[10]~~ percent on unpaid principal and interest shall be added as collection or attorney's fees.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2189 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2189** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2523 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2523, Relating to the prevention of Medicaid fraud; imposing civil penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2523 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2523** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Wentworth.

Absent: Brown, Harris, Henderson.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Wentworth asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 552 ON SECOND READING

Senator Haywood, on behalf of Senator Sims, again asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 552, Relating to peace officers of hospitals in certain municipalities.

There was objection.

Senator Haywood, on behalf of Sims, then moved to suspend the regular order of business and take up **H.B. 552** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 8.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Galloway, Haywood, Leedom, Lucio, Madla, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth, West, Zaffirini.

Nays: Gallegos, Henderson, Luna, Montford, Rosson, Truan, Turner, Whitmire.

Absent: Harris.

The bill was read second time.

Senator Haywood, on behalf of Senator Sims, offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 552** in SECTION 1 of the bill, in Section 311.004, Health and Safety Code (House engrossment, page 2, between lines 11-12), by adding new Subsection (f) to read as follows and relettering existing Subsection (f) (House engrossment, page 2, line 12) as Subsection (g):

(f) This section does not apply to a hospital in a municipality located in a county with a population of more than 2.8 million.

The committee amendment was read and was adopted by a viva voce vote.

Senator Turner offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 552** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter A, Chapter 311, Health and Safety Code, is amended by adding Section 311.004 to read as follows:

Sec. 311.004. PEACE OFFICERS FOR HOSPITALS IN CERTAIN MUNICIPALITIES. (a) The governing board of a public hospital in a municipality with a population of 45,000 or more may employ and commission peace officers to protect the hospital.

(b) At the request of a hospital, other than a public hospital, in a municipality with a population of 45,000 or more, the governing body of the municipality shall permanently assign one or more commissioned peace officers to protect the hospital. A hospital to which a peace officer is assigned under this subsection shall reimburse the municipality for the cost of providing the peace officer.

(c) A hospital that commissions a peace officer or to which a peace officer is assigned under this section shall pay the certification or licensing fees for the peace officer license that are charged by the Commission on Law Enforcement Officer Standards and Education.

(d) The primary jurisdiction of a peace officer commissioned by or assigned to a hospital under this section includes:

(1) the property owned or controlled by the hospital; and

(2) the part of any public street or alley that is contiguous to hospital property.

(e) Within a peace officer's primary jurisdiction, a peace officer commissioned by or assigned to a hospital under this section:

(1) is vested with all the powers, privileges, and immunities of peace officers;

(2) may, in accordance with Chapter 14, Code of Criminal Procedure, arrest without a warrant any person who violates a law of the state; and

(3) may enforce all traffic laws on streets and highways.

(f) Outside a peace officer's primary jurisdiction, a peace officer commissioned by or assigned to a hospital under this section is vested with all the powers, privileges, and immunities of peace officers and may arrest any person who violates any law of the state if the peace officer:

(1) is summoned by a law enforcement agency to provide assistance; or

(2) is assisting a law enforcement agency.

(g) This section does not apply to a hospital in a municipality located in a county with a population of more than 2.8 million.

(h) In this section:

(1) "Hospital" has the meaning assigned by Section 311.031.

(2) "Public hospital" means a hospital owned or operated by a political subdivision of this state.

SECTION 2. Article 2.12, Code of Criminal Procedure, as amended by Chapters 339, 695, and 912, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs and their deputies;

(2) constables and deputy constables;

(3) marshals or police officers of an incorporated city, town, or village;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 21.483, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than one million, according to the most recent federal census, that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers commissioned as peace officers by the State Treasurer;

(15) officers commissioned by a water control and improvement district under Section 51.132, Water Code;

(16) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);

(17) investigators commissioned by the Texas State Board of Medical Examiners;

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned by the State Board of Pharmacy;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 13, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), or by a regional transportation authority under Section 10, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes);

(23) officers commissioned by the Texas High-Speed Rail Authority;

(24) investigators commissioned by the attorney general under Section 402.009, Government Code;

(25) security officers and investigators commissioned as peace officers under Chapter 466, Government Code; ~~and~~

(26) an officer employed by the Texas Department of Health under Section 431.2471, Health and Safety Code;[:]

~~(27) [(26)]~~ officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;[:]

~~(28) [(26)]~~ officers commissioned by the state fire marshal under Chapter 417, Government Code; and

(29) officers commissioned by or assigned to a hospital under Section 311.004, Health and Safety Code.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Haywood moved to table Floor Amendment No. 1.

The motion to table was lost by the following vote: Yeas 14, Nays 14. (Not receiving a majority vote of Members present)

Yeas: Bivins, Brown, Cain, Galloway, Haywood, Madla, Moncrief, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Zaffirini.

Nays: Armbrister, Barrientos, Ellis, Gallegos, Henderson, Lucio, Luna, Montford, Nelson, Rosson, Truan, Turner, Wentworth, Whitmire.

Absent: Harris, Leedom, West.

Question—Shall Floor Amendment No. 1 to **H.B. 552** be adopted?

Senator Sibley offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **H.B. 552** by adding new Section 3 to read as follows and renumbering subsequent sections accordingly.

SECTION 3. The provisions of this act shall not affect the applicability of Section 51.214, Education Code, as amended by **S.B. 238** of the 74th Legislative Session.

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by the following vote: Yeas 14, Nays 13.

Yeas: Armbrister, Barrientos, Ellis, Gallegos, Haywood, Lucio, Luna, Montford, Nelson, Rosson, Truan, Turner, Wentworth, Whitmire.

Nays: Bivins, Brown, Cain, Galloway, Madla, Moncrief, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Zaffirini.

Absent: Harris, Henderson, Leedom, West.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 552 ON THIRD READING

Senator Haywood, on behalf of Senator Sims, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 552** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Henderson, Shapiro.

HOUSE JOINT RESOLUTION 80 ON SECOND READING

On motion of Senator Montford, on behalf of Senator Sims, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 80, Proposing a constitutional amendment to abolish the office of constable in Mills, Reagan, and Roberts counties.

The resolution was read second time.

Senator Leedom offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **H.J.R. 80** as follows:

1. In SECTION 1 by amending Subsection (f), Section 18, Article V, Texas Constitution, as follows:

(f) The office of Constable in Roberts County is abolished. The functions of the office are transferred to the County Sheriff. However, the office of Constable is abolished under this subsection only if, at the statewide election at which the constitutional amendment providing for the abolition is submitted to the voters, a majority of the voters of Roberts County voting on the question at that election favor the amendment.

2. In SECTION 3 by amending the Temporary Provision to read as follows:

TEMPORARY PROVISION. The abolition of the office of constable in Roberts County under the constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, providing for the abolition of that office in that county, takes effect January 1, 1996, if the conditions of Subsection (f), Section 18, Article V, as added by that constitutional amendment, are met. This temporary provision expires January 2, 1996.

3. By amending SECTION 4 to read as follows:

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 7, 1995. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the abolition of the office of constable in Mills and Roberts counties."

4. Amend the caption to conform to the body of the resolution.

The amendment was read and was adopted by a viva voce vote.

The resolution as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Lucio asked to be recorded as voting "Nay" on the passage of the resolution to third reading.

HOUSE JOINT RESOLUTION 80 ON THIRD READING

Senator Montford, on behalf of Senator Sims, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.J.R. 80** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Lucio.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

ORDERED NOT PRINTED

On motion of Senator Montford and by unanimous consent, **S.R. 1186** was ordered not printed in the Senate Journal.

SENATE RESOLUTION 1186

Senator Montford offered the following resolution:

S.R. 1186, Suspending the limitations on conference committee jurisdiction on **H.B. 1**.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

(President in Chair)

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1 ADOPTED**

Senator Montford called from the President's table the Conference Committee Report on **H.B. 1**. The Conference Committee Report was filed with the Senate on Tuesday, May 23, 1995.

On motion of Senator Montford, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

STATEMENT OF LEGISLATIVE INTENT

Senator Zaffirini submitted the following statement of legislative intent on **H.B. 1**:

Funding the South Texas/Border Region Health Initiatives will expand graduate medical education and other health professional activities throughout the border region.

These educational programs will work in concert with local health care providers to develop a health care infrastructure capable of meeting the needs of all persons in the South Texas/Border Region. This cooperative spirit is reflected in the Driscoll Children's Hospital Rider, Article III, Sec. 36, of the Special Provisions Relating Only to State Agencies of Higher Education. The intent of this rider is to promote regional cooperation between public and private health providers and not to restrict the present or future service and clinical development plans of hospitals such as the Sisters of Charity Incarnate Word or their affiliated hospitals, Santa Rosa Health Care and their medical staffs, or the Bexar County Hospital District Hospitals and their medical staffs.

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(Senator Moncrief in Chair)

HOUSE BILL 2032 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2032, Relating to the administration of medical and dental units of public institutions of higher education.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2032** by adding the following SECTION 2 and renumbering present SECTIONS accordingly:

SECTION 2. Section 830.201, Government Code, is amended by adding Subsections (d), (e) and (f) to read as follows:

(d) For a person who first became a participant in the optional retirement program beginning after August 31, 1996, the compensation limitation of Section 401(a)(17), Internal Revenue Code of 1986 (26 U.S.C. Section 401), applies.

(e) For a person who first became a participant in the optional retirement program before September 1, 1996, the compensation limitation under Section 401(a)(17), Internal Revenue Code (26 U.S.C. Section 401), does not apply. For these persons, the amount of compensation allowed to be taken into account under the plan shall be the amount allowed to be taken into account as of July 1, 1993.

(f) Subsection (e) of this section does not apply to a person whose compensation in excess of the compensation limitation of Section 401(a)(17), Internal Revenue Code (26 U.S.C. Section 401), or whose state retirement contribution under this subchapter, is paid from general revenue funds or any student tuition or fee assessed under Chapters 54 or 55, Education Code.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2032 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2032** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE

HOUSE BILL 52 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 52, Relating to the authority of state and local governments to make purchases and contracts and to engage in certain projects.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 52** by deleting SECTION 7 and inserting in lieu thereof the following:

SECTION 7. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.904 to read as follows:

Sec. 271.904. INDEMNIFICATION. (a) Except as provided by subsection (b), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a registered engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage that:

(1) is caused by or results from the negligence of the governmental agency or its agent or employee; and

(2) arises from:

(A) personal injury or death;

(B) property injury; or

(C) any other expense that arises from personal injury, death, or property injury.

(b) A covenant under which a registered engineer or registered architect agrees to indemnify or hold harmless a governmental agency or its agent or employees against liability arising from the personal injury or death of the architect or engineer or the employees of the architect or engineer is enforceable.

(c) In this section, "governmental agency" has the meaning assigned by Section 271.003.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis, on behalf of Senator West, offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 52** by adding the following Section and renumber remaining Sections appropriately:

SECTION Chapter 252, Subchapter C, Section 252.048, Local Government Code, is amended to read as follows:

Sec. 252.048 CHANGE ORDERS. (a) If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the municipality may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that

purpose from available funds or is provided for by the authorization of the issuance of time warrants.

(c) If a change order involves a decrease or an increase of [~~\$15,000~~] \$25,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

(d) The original contract price may not be increased under this section by more than 25 percent. The original contract price may not be decreased under this section by more than 25 percent without the consent of the contractor.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis, on behalf of Senator West, offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 52 by adding the following appropriately numbered SECTION.

SECTION ____ . Subsection (a), Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall certify businesses that are historically underutilized businesses. As part of its certification procedures, the commission may approve another certification [~~a municipal~~] program that certifies historically underutilized businesses under substantially the same definition prescribed by Section 1.02(3) of this Act, and municipalities may adopt the certification program of the commission, the federal Small Business Administration, a political subdivision, or another governmental entity [~~certify businesses certified by the municipality as historically underutilized businesses under this Act.~~]

The amendment was read and was adopted by a viva voce vote.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.H.B. 52 by striking all of SECTION 8, beginning at page 8, line 13 and inserting in lieu thereof:

SECTION 8. Sections 19 and 22, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 19. Public Work. (a) It is unlawful for the State or for any of its political subdivisions, including any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer. However nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed Eight Thousand

(\$8,000.00) Dollars. The Board shall promulgate rules providing for specific exceptions to this requirement for projects over \$8,000, if the Board determines that public health, safety and welfare will not be negatively impacted.

Sec. 22C. Administrative Penalties. (a) The Board may promulgate rules to impose an administrative penalty against a person licensed under this Act or any other person who violates this Act or a rule or order adopted under this Act. The Board may include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation.

(b) The penalty for a violation may be in an amount not to exceed \$3,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund, except that the portion of the penalty that represents the costs of the Board in investigating and prosecuting the violation shall be appropriated and remitted to the Board for enforcement purposes.

(d) All proceedings under this section are subject to Chapter 2001, Government Code.

The amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 5

Amend C.S.H.B. 52 by striking SECTION 10 and SECTION 11 in their entirety and renumbering remaining sections accordingly.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 52 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.H.B. 52 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2860 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business, Senate Rule 5.14(a), and all necessary rules were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2860, Relating to the power of certain school districts to grant tax abatements.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2860 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2860** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

VOTES RECONSIDERED

On motion of Senator Turner and by unanimous consent, the vote by which **H.B. 552** was finally passed was reconsidered.

Question—Shall **H.B. 552** be finally passed?

On motion of Senator Turner and by unanimous consent, the vote by which the Three-Day Rule on **H.B. 552** was suspended was reconsidered.

Question—Shall the Three-Day Rule be suspended for **H.B. 552**?

On motion of Senator Turner and by unanimous consent, the vote by which **H.B. 552** as amended was passed to third reading was reconsidered.

Question—Shall **H.B. 552** as amended be passed to third reading?

On motion of Senator Turner and by unanimous consent, the vote by which Floor Amendment No. 1 as amended to **H.B. 552** was adopted was reconsidered.

Question—Shall Floor Amendment No. 1 as amended to **H.B. 552** be adopted?

The amendment as amended failed of adoption by the following vote: Yeas 14, Nays 15.

Yeas: Armbrister, Barrientos, Ellis, Gallegos, Henderson, Lucio, Luna, Montford, Patterson, Rosson, Truan, Turner, West, Whitmire.

Nays: Brown, Cain, Galloway, Haywood, Leedom, Madla, Moncrief, Nelson, Nixon, Ratliff, Shapiro, Sibley, Sims, Wentworth, Zaffirini.

Absent: Bivins, Harris.

The bill as amended was again passed to third reading by the following vote: Yeas 19, Nays 10.

Yeas: Bivins, Brown, Cain, Galloway, Haywood, Leedom, Lucio, Madla, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth, West, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Henderson, Luna, Montford, Rosson, Truan, Turner, Whitmire.

Absent: Armbrister, Harris.

**MOTION TO PLACE
HOUSE BILL 552 ON THIRD READING**

Senator Haywood, on behalf of Senator Sims, again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 552** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 19, Nays 11. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Bivins, Brown, Cain, Galloway, Haywood, Leedom, Madla, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth, West, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Henderson, Lucio, Luna, Montford, Rosson, Truan, Turner, Whitmire.

Absent: Harris.

HOUSE BILL 2969 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2969, Relating to the acquisition and disposition of land and facilities by a municipality and to the issuance of municipal bonds.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2969** as follows:

(1) Strike the following language in Section 1, Subsection 2 of **H.B. 2969**.

"selling, pursuant to an installment sale agreement or otherwise, or leasing, with or without an option to purchase, without the need for public notice or bidding, and otherwise on such terms as the governing body of the municipality may find acceptable."

"including, but not limited to, an "institution of higher education" under Section 61.003, Education Code, which will provide a significant number of vocational and vocational-technical education courses in the facility."

The committee amendment was read and failed of adoption by a viva voce vote.

Senator Brown offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 2969** as follows:

(1) Add to the existing SECTION 1, and the following:

SECTION 1. Section 2A, Article 835s, Revised Statutes, is added to read as follows:

Sec. 2A. A municipality with a population greater than 8,000 but less than 10,000 that is located in two counties with populations of 225,000 or more but less than 2,818,199 may acquire, by any lawful means other than eminent domain, land, and may construct or otherwise acquire a building or other facility for the purpose of selling, pursuant to an installment sale agreement or otherwise, or leasing the land, building or other facility to an "institution of higher education" under Section 61.003, Education Code, which will provide a significant number of vocational and vocational-technical education courses in the facility for public use. A sale or lease under this section to an "institution of higher education" may proceed without the need for public notice or bidding, and otherwise on such terms as the governing body of the municipality may find acceptable.

The committee amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 2969** as follows:

(1) Strike the following language in Section 1, subsection 2 of **H.B. 2969**:

"selling, pursuant to an installment sale agreement or otherwise, or . . . with or without an option to purchase, without the need for public notice or bidding, and otherwise on such terms as the governing body of the municipality may find acceptable."

"including, but not limited to, an "institution of higher education" under Section 61.003, Education Code, which will provide a significant number of vocational and vocational-technical education courses in the facility."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2969 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2969** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1547 ON SECOND READING

On motion of Senator Armbrister, on behalf of Senator Bivins, and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1547, Relating to weight, length, and hours of operation restrictions on certain vehicles.

The bill was read second time.

Senator Armbrister, on behalf of Senator Bivins, offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1547** by striking SECTION 3 of the bill and renumbering the remaining sections appropriately.

The committee amendment was read and was adopted by a viva voce vote.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1547** by adding the following appropriately numbered sections to read as follows and by renumbering the existing sections as appropriate:

SECTION ____ . Subdivision (2), Subsection (b), Section 2, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) Not later than the 14th day after the date the department issues ~~[a person receives]~~ a permit under Section 5B of this Act, the department ~~[person]~~ shall notify ~~[by certified or registered mail, return receipt requested;]~~ the county clerk of each county listed in the permit application ~~that [in which]~~ the person intends to operate or cause to be operated an overweight vehicle in the county ~~[the vehicle]~~. The notification must include:

(A) the name and address of the person for whom a permit was issued ~~[the registered owner or operator of the vehicle]; and~~

(B) the vehicle identification number and license plate number of the vehicle[;]

~~[(C) a statement that the person intends to operate or cause to be operated the vehicle on, over, or across the county roads, bridges, and culverts with a gross weight, axle weight, or wheel load that exceeds the limitations established under Section 5 or Section 5 1/2 of this Act; and~~

~~[(D) a statement that the notification is given pursuant to this subsection].~~

SECTION ____ . Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by amending Subsections (e) and (i) and adding Subsections (j) and (k) to read as follows:

(e)(1) The permit is valid for one year and must be carried in the vehicle. The fee for the permit is a base fee of \$75 plus the fees provided by Subdivision (2) of this subsection. The state treasurer shall remit \$50 of each base permit fee to the counties of the state, with such amount to be distributed among the various counties based on the ratio of the total

number of miles of county roads maintained by a county to the total number of miles of county roads maintained by all of the counties of this state. The remaining \$25 of the base fee shall be deposited to the credit of the state highway fund and may be appropriated only to the department to administer this section.

(2)(A) At the time of application, an applicant must designate the counties in which the vehicle will operate. In addition to the base fee required by Subdivision (1) of this subsection, an applicant for a permit shall pay annually a fee for the number of counties designated by the applicant. A permit issued under this section is not valid for use in a county that is not listed on the permit application. The fee schedule under this subdivision is:

<u>Number of counties listed on permit application</u>	<u>Fee</u>
<u>1-20</u>	<u>\$125</u>
<u>21-40</u>	<u>\$345</u>
<u>41-60</u>	<u>\$565</u>
<u>61-80</u>	<u>\$785</u>
<u>81-100</u>	<u>\$1,005</u>
<u>101-254</u>	<u>\$2,000</u>

(B) At the time of application, a person shall pay, in addition to the fees required by Subdivision (1) of this subsection and Paragraph (A) of this subdivision, an administrative fee set by rule by the department in an amount not to exceed the direct and indirect costs of the department to:

(i) issue a sticker under Subdivision (5) of this subsection;

(ii) make the distribution of funds as required by Subdivision (3) of this subsection; and

(iii) provide notice to a county as required by Section 2(b)(2) of this Act.

(3)(A) The fee required by Subdivision (2)(A) of this subsection shall be distributed among the counties listed on the permit application based on the ratio of the total number of miles of county roads maintained by a county listed on the application to the total number of miles of county roads maintained by all of the counties listed on the application.

(B) The fee required by Subdivision (2)(B) of this subsection shall be deposited in the state treasury to the credit of the state highway fund and may be appropriated only to the department to administer this section.

(4) The state treasurer shall remit the sums due each county under this subsection to the county treasurer or officer performing the function of that office of the county at least twice in each fiscal year. The county treasurer or officer shall deposit such amounts in the county depository of his county to the credit of the County Road and Bridge Fund. The amounts deposited in the fund under this subdivision may be used only for a purpose authorized by Section 4.003(b), County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes).

(5) Each time the department issues a permit under this section, the department shall issue a sticker to be placed above the state inspection sticker on the front windshield of the vehicle. The sticker must be in a form designed to aid in the enforcement of weight limits for motor vehicles and must indicate the expiration date of the permit. A sticker must be removed from the vehicle at the time it expires, when a lease of the vehicle expires, or when the vehicle is sold.

(i) A permit issued under this section may not be transferred. However, if the vehicle for which the permit is issued is destroyed or otherwise becomes permanently inoperable, a person may apply to the department for a credit for the remaining time the permit was valid. The department shall issue a prorated credit for the remaining time on the permit if the person:

(1) pays a fee set by the department in an amount not to exceed the cost of issuing the credit; and

(2) provides to the department:

(A) the original permit; or

(B) if the original permit no longer exists, written evidence of the destruction or permanent incapacity of the vehicle in a form approved by the department [by the department without charge from one vehicle to another vehicle if the vehicle for which the permit was issued will be out of service for more than 30 days because of a mechanical failure or the vehicle is sold or the lease for the vehicle has terminated. A permit may only be transferred to a vehicle for which an original permit may be issued, and a transfer does not extend the period for which the permit is valid. A person shall apply for a transfer by filing an affidavit with the department stating the reason the person is entitled to the transfer and describing the vehicle, including the vehicle identification number, to which the permit is to be transferred].

(j)(1) A credit issued under Subsection (i) of this section may be used only toward the payment of permit fees under this section.

(2) The fee required by Subsection (i)(1) of this section shall be deposited in the state treasury to the credit of the state highway fund and may be appropriated only to the department to administer this section.

(k) Sections 403.094(h) and 403.095, Government Code, do not apply to funds deposited to the credit of the state highway fund under this section.

SECTION ____ . Section 15, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d)(1) A person who holds a permit issued under Section 5B of this Act commits an offense if the person:

(A) operates or directs the operation of the vehicle for which the permit was issued on a public highway or road; and

(B) is criminally negligent with regard to the operation of the vehicle in excess of the weight limits authorized by Section 5B(b) of this Act.

(2) A person who holds a permit issued under Section 5B of this Act commits an offense if the person operates or directs the operation of the vehicle for which the permit was issued:

(A) in a county not listed on the person's permit application under Section 5B(e) of this Act; and

(B) in excess of the normal weight limits established under this Act or the County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes).

(3) Except as provided by Subdivision (4) of this subsection, an offense under Subdivision (1) or (2) of this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$150.

(4) An offense under Subdivision (1) or (2) of this subsection is a misdemeanor punishable by a fine of:

(A) not less than \$300 or more than \$500 if the offense involves a vehicle having a gross weight that is more than 5,000 pounds and not more than 10,000 pounds over the vehicle's allowable gross weight; or

(B) not less than \$500 or more than \$1,000 if the offense involves a vehicle having a gross weight that is 10,000 pounds or more over the vehicle's allowable gross weight.

(5) A fine provided by Subdivision (3) or (4) is doubled if the offense occurs before the first anniversary of a conviction of a previous offense under this subsection.

(6) A governmental entity collecting a fine under Subdivision (4) of this subsection shall forward an amount equal to 50 percent of the fine to the comptroller for deposit in a special account in the general revenue fund that may be appropriated only to the Department of Public Safety for the enforcement of laws relating to overweight and oversized vehicles.

(7) A justice of the peace has jurisdiction of any offense under this subsection. A municipal court has jurisdiction of any offense under this subsection in which the fine does not exceed \$500.

(8) A judge of a court rendering a conviction under this subsection shall report the conviction to the Department of Public Safety. The department shall keep a record of each conviction reported under this subdivision.

(9) A person commits an offense if the person fails to display the sticker in the manner required by Section 5B(e) of this Act. An offense under this subdivision is a Class C misdemeanor.

SECTION ____ . Section 5(a), Chapter 71, Acts of the 47th Legislature, Regular Session, 1941, is amended to read as follows:

(a) Except as provided by Subsection (c), any person, corporation, receiver or association who violates any provision of Section 5, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), (the Section fixing the gross weight of commercial motor vehicles) shall, upon conviction, be punished by a fine of not less than \$100 or more than \$150, except that if the offense involves a vehicle having a gross weight that is

more than 5,000 pounds and not more than 10,000 pounds over the vehicle's allowable gross weight, the fine is not less than \$300 or more than \$500, and if the offense involves a vehicle having a gross weight that is more than 10,000 pounds over the vehicle's allowable gross weight, the fine is not less than \$500 or more than \$1,000. The fines provided for an offense subject to this subsection are doubled if the offense occurs before the first anniversary of a conviction of a previous offense subject to this subsection. A governmental entity collecting a fine under this subsection for an offense involving a vehicle having a gross weight that is more than 5,000 pounds over the vehicle's allowable gross weight shall forward an amount equal to 50 percent of the fine to the comptroller for deposit in a special account in the general revenue fund that may be appropriated only to the Department of Public Safety for the enforcement of laws relating to overweight and oversized vehicles. A justice of the peace has jurisdiction of any offense under this subsection. A municipal court has jurisdiction of any offense under this subsection in which the fine does not exceed \$500. [One Hundred Dollars (\$100), nor more than One Hundred Fifty Dollars (\$150); for a second conviction within one year thereafter such person, corporation, receiver, or association shall be punished by a fine of not less than One Hundred Fifty Dollars (\$150) nor more than Two Hundred Fifty Dollars (\$250) or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the second conviction such person, corporation, receiver, or association shall be punished by a fine of not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.] It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section and it shall be the duty of the Department of Public Safety to keep a record thereof.

SECTION ____ Chapter 1, Title 116, Revised Statutes, is amended by adding Article 6674o-2 to read as follows:

Art. 6674o-2. COUNTY AND MUNICIPAL BRIDGE INSPECTION.

(a) If the Texas Department of Transportation determines after an inspection that a bridge under the jurisdiction of a county or municipality qualifies for a lower load rating under 23 C.F.R. Sections 650.301-650.311 than is currently permitted, the department shall notify the commissioners court of the county or the governing body of the municipality.

(b) A commissioners court or governing body that receives notice under Subsection (a) of this article shall post notice on a road or highway approaching the bridge indicating that traffic is restricted consistent with the new lower load rating. The notice must be placed in a location that enables restricted traffic to avoid crossing the bridge.

SECTION ____ (a) A permit issued under Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), before the effective date of this Act remains valid until the permit expires or is revoked.

(b) A person possessing a valid permit as described by Subsection (a) of this section is not required to display a sticker on a vehicle as required by Subdivision (5), Subsection (e), Section 5B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), as added by this Act, until the permit expires.

(c) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

The amendment was read and was adopted by a viva voce vote.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1547**, in SECTION 1, amended Section 5B(b), Article 6701d-11, Vernon's Texas Civil Statutes (committee printing, page 1, line 29), by striking "or distance between axles".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1547 ON THIRD READING

Senator Armbrister, on behalf of Senator Bivins, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1547** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 713 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 713, Relating to the regulation of private investigators and private security agencies; creating a criminal penalty.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 713** as follows:

(1) Add the following appropriately numbered Section:

SECTION . The Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), is amended by adding sections 3A and 3B to read as follows:

(3A) The Board has authority to interpret and issue opinions resolving questions raised concerning the eligibility of alarm system installations to comply with Section 5.33A of the Texas Insurance Code. Such interpretations or opinions shall be conclusive as far as general conditions or individual installations are concerned.

(3B) The Board may authorize alarm system companies to issue a certificate of installation showing that an installation complies with Article 5.33A, Texas Insurance Code in lieu of the inspection required in the Insurance Code. The certificate must be furnished to the insurer and the insurer shall determine whether the person's property is in compliance with Article 5.33A of the Insurance Code. It is the responsibility of the insurer to determine compliance taking into consideration the certificate issued by the installer and other investigation as the insurer may determine to be appropriate.

(2) Renumber the remaining Sections of the bill appropriately.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Armbrister asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 1.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Armbrister asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 713 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.H.B. 713 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Armbrister.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 345**. The House conferees are: Representatives Uher, Chair; Junell, Smithee, Oliveira, and S. Turner.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 744**. The House conferees are: Representatives Holzheuser, Chair; Hawley, Hirschi, Dutton, and West.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1396**. The House conferees are: Representatives Dukes, Chair; Maxey, Krusee, Hilderbran, and B. Turner.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1502**. The House conferees are: Representatives R. Cuellar, Chair; Harris, Jackson, McDonald, and Munoz.

The House has granted a request of the Senate for the appointment of a conference committee on **S.B. 1646**. The House conferees are: Representatives H. Cuellar, Chair; Greenberg, Hochberg, Woolley, and Coleman.

The House has adopted the Conference Committee Report on **S.B. 870** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1651** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1642** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1481** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1366** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1048** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 785** by a non-record vote.

The House refused to concur in Senate amendments to **H.B. 2861** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Grusendorf, Chair; Carter, Allen, Driver, and Madden.

The House refused to concur in Senate amendments to **H.B. 2754** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Pitts, Chair; Bosse, Alexander, Price, and McCall.

The House refused to concur in Senate amendments to **H.B. 1770** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees

are: Representatives R. Lewis, Chair; Hamric, Wohlgemuth, Kamel, and Munoz.

The House refused to concur in Senate amendments to **H.B. 1541** and requested the appointment of a conference committee to consider the difference between the two Houses. The House conferees are: Representatives Torres, Chair; Brimer, Goolsby, Hilbert, and Yarbrough.

The House has concurred in Senate amendments to **H.B. 1479** by a non-record vote.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
HOUSE BILL 3203 ON SECOND READING**

On motion of Senator Luna and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3203, Relating to the election of municipal court of record judges in San Antonio.

The bill was read second time.

POINT OF ORDER

Senator Wentworth raised the following point of order:

Mr. President, I raise a point of order against further consideration of **H.B. 3203** on the grounds that it is uncertain whether Senator Henderson suspended Senate Rule 11.11(b) in order to allow the Jurisprudence Committee to meet without giving 24 hours public notice or Senate Rule 11.19(a) to allow the Committee to hear two bills without posting 24 hours public notice.

During the announcement period of the Senate session on Thursday, May 18, 1995, Senator Henderson asked to be recognized for a motion and an announcement. Henderson moved to suspend the Posting Rule so that the Jurisprudence Committee could hear **H.B. 3073** and **H.B. 3235** at his desk upon adjournment. Henderson then announced that Jurisprudence would meet at his desk upon adjournment. At that meeting, the Jurisprudence Committee considered and passed **H.B. 3073** and **H.B. 3235**, the two bills Henderson referenced in his motion. At the same meeting, the Committee also took up and passed **H.B. 3203** which had been left pending at a prior meeting of the Committee.

The meeting of the Committee at Henderson's desk required suspension of both Senate Rule 11.11(b) and Senate Rule 11.19(a).¹ Since Senate

¹Senate Journal, 74th Legislature-Regular Session, Fifty-Third Day, April 19, 1995, p. 1164, records the proper procedure for suspending both Senate Rule 11.11 and Senate Rule 11.19. Interestingly, these motions were made on that day by Senator Henderson so that the Jurisprudence Committee could meet to consider **S.B. 1585**.

Rule 11.11(b) requires 24 hours public notice of a special meeting of a committee and since such notice had not been given for the May 18th meeting of the Jurisprudence Committee,² the May 18th meeting required suspension of Rule 11.11(b). Since Henderson wished to hear **H.B. 3073** and **H.B. 3235** without posting notice in accordance with Senate Rule 11.19(a), the meeting also required suspension of that rule.

Since the Senate Journal is the official record of the Senate, we must turn to that document to determine what rule or rules were suspended by Henderson. The Journal entry reads:

SENATE POSTING RULE SUSPENDED

Senator Henderson moved to suspend the Posting Rule on **H.B. 3073** and **H.B. 3235** so that they may be heard by the Jurisprudence Committee at his desk on adjournment.

There was no objection.³

The Journal indicates that Henderson suspended the Posting Rule but does not specify which Posting Rule was suspended since both Rule 11.11 and Rule 11.19 are referred to as the "Posting Rule."⁴ However, it is clear from the Journal that Henderson suspended suspension of "the Posting Rule;" he did not move to suspend the posting rules and he did not move to suspend all necessary rules. Therefore, Henderson could have suspended only one rule, and this is indeed what the Journal indicates. Since the Committee meeting itself and the bills considered during that meeting required suspension of two rules, I ask that you determine which rule Henderson suspended. Because the Journal is not definitive as to whether Rule 11.11(b) or Rule 11.19(a) was suspended, I respectfully request that you consult the transcript of the proceedings, an excerpt of which is attached.

With this Point of Order, Mr. President, I respectfully submit to you the following question:

With his motion to suspend the Posting Rule during the Senate session on Thursday, May 18, 1995, did Senator Henderson suspend Senate Rule 11.11(b) or Senate Rule 11.19(a)?

WENTWORTH

²Senator Henderson did post a Notice of Public Hearing for the Jurisprudence Committee to meet Thursday, May 18, 1995, at 10:30 a.m. or upon adjournment, in accordance with Senate Rule 11.11(b). The Notice was received by the Secretary of the Senate on May 16, 1995, at 10:36 a.m. However, notice of cancellation of this meeting was received by the Secretary of the Senate on May 17, 1995, at 9:40 a.m.

³Senate Journal, 74th Legislature, Regular Session, Seventy-Fourth Day, Friday, May 12, 1995.

⁴Senate Journal, 74th Legislature-Regular Session, Fifty-Third Day, April 19, 1995, p. 1164, refers to both Senate Rule 11.11 and Senate Rule 11.19 as the Posting Rule.

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Adjourned May 29, 1995

VOLUME IV

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Linda Hopkins, Assistant
Charlene Ansley
Frances Hill
Jan Meinscher
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